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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 573

GREAT NORTHERN RAILWAY COMPANY,
APPELLANT,

vs.

THE STATE OF WASHINGTON

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED NOVEMBER 7, 1935.

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IN SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THURSTON COUNTY

No. 15417

STATE OF WASHINGTON, Plaintiff,

v.

GREAT NORTHERN RAILWAY COMPANY, a Corporation, Defendant

COMPLAINT—Filed Feb. 28, 1934

Comes now the plaintiff, and for complaint alleges:

(1) That at all times herein mentioned defendant was and now is a corporation organized and existing under the laws of Minnesota and was and is engaged in and continuing in the business within the state of Washington of owning and operating steam railways as a common carrier for hire, and was and now is engaged in and continuing in the business in the state of Washington of a light and power, a telephone company, a telegraph company, and a public service company, all as defined in Session Laws of Washington for 1933, Chapter 191, section 2, subdivision (2), subdivision (c), sub-sub-divisions III, IV, VI and XII.

(2) That defendant, as such common carrier, is now, and for many years has been, subject to the Interstate Commerce Act, and as such has for a long number of years, and at all the times herein mentioned, kept its accounts and made its reports to the Interstate Commerce Commission, the Tax Commission of the State of Washington, and the Department of Public Works of the State of Washington, by the uniform system of accounts prescribed by the Interstate Commerce Commission for steam railway corporations. That in and by such method of accounting, defendant's receipts are now, and for many years last past have been, classified both by number and name according to the source of such receipts. That defendant's receipts from its said operations are now, and for many years last past have [fol. 5] been, classified in its income account as Account No.

501, denominated "railway operating revenues," and that said Account No. 501 is now, and for many years last past has been, sub-classified as to the particular character of such revenues according to the following account numbers and designations:

Rail-line transportation as follows:

Account number	Name of account
101	Freight
102	Passenger
103	Excess baggage
104	Sleeping car
105	Parlor and chair car
106	Mail
107	Express
108	Other passenger-train
109	Milk
110	Switching
111	Special service train
112	Other freight-train
113	Water transfers—Freight
114	Water transfers—Passenger
115	Water transfers — vehicles and live stock
116	Water transfers—Other

Water-line transportation revenue as follows:

Account number	Name of account
121	Freight
122	Passenger
123	Excess baggage
124	Other passenger service
125	Mail
126	Express
127	Special service
128	Other

[fol. 6] Incidental operative revenues as follows:

Account number	Name of account
131	Dining and buffet
132	Hotel and restaurant
133	Station, train and boat privileges
134	Parcel room

135	Storage—Freight
136	Storage—Baggage
137	Demurrage
138	Telegraph and telephone
139	Grain elevator
140	Stockyard
141	Power
142	Rents of buildings and other property
143	Miscellaneous

Joint facility operating revenues as follows:

Account number	Name of account
151	Joint facility—Cr.
152	Joint facility—Dr.

(3) That all of the railway operating revenues included in said accounts set forth in paragraph (2) hereof (except said account numbers 106 and 125, "Mail", said account number 138, "Telephone and Telegraph", and said account number 141, "Power") which were received by, or accrued to, defendant during the months of August, 1933, to December, 1933, inclusive, as a result of business transacted wholly within the state of Washington, constituted the gross income of defendant in the state of Washington as defined by Section one, of said chapter 191, and that defendant is taxable under the provisions of said chapter 191 in an amount equal to one and one-half per cent of such railway operating revenues. That the exact amount of such gross income for said months, or any of them, is un- [fol. 7] known to plaintiff, but that plaintiff is informed and believes, and therefore states the fact to be, that the amount thereof for said respective months and the several amounts of taxes payable by defendant by reason thereof under said chapter 191, are not less than as shown by the following table:

Column 1 Month	Column 2 Gross income	Column 3 Amount of tax
August, 1933	$295,284.98	$4,429.27
September, 1933	293,022.07	4,395.33
October, 1933	325,244.36	4,878.67
November, 1933	287,018.44	4,305.28
December, 1933	203,525.79	3,052.89
Total		$21,061.44

That amounts not less than the several respective sums set forth in said Column 3 became due and owing to plaintiff from defendant on the 15th day of the month next following the month named in said Column one set opposite said respective amounts; that no part of said taxes have been paid, and that the same are now due and owing to plaintiff from defendant, together with interest thereon at the rate of one per cent. per month from the several dates when the same became due, together with a penalty of ten per cent. on the amount of said unpaid taxes.

(4) That all of the railway operating revenues included in accounts numbers 138 and 141 which were received by, or accrued to, defendant during the months of August, 1933, to December, 1933, inclusive, as a result of business transacted wholly within the state of Washington, constituted gross income of defendant in the state of Washington as defined by Section one, said chapter 191, and that defendant is taxable under the provisions of said chapter 191, in an amount equal to three per cent. of such railway operating revenues. That the exact amount of such gross income for said months, or any of them, is unknown to plaintiff, but that plaintiff is informed and believes, and therefore states the fact to be that the amount thereof [fol. 8] is a substantial amount and greatly exceeds $200.00.

(5) That defendant has heretofore instituted a suit in the United States District Court for the Western District of Washington, Southern Division, the same being Equity Cause No. 512, against T. S. Hedges and T. M. Jenner, the same being all of the present members of the tax commission of the State of Washington, wherein defendant, as the plaintiff in said suit, alleges that said chapter 191 is unconstitutional and void as to the defendant herein, and praying that said Hedges and Jenner, and each of them, and their agents and employes, be restrained and enjoined from taking any action against the defendant herein, or its employes, for failure to make a return under said chapter 191, and from making any assessment against said defendant for any tax collectible thereunder, or any part thereof, and from issuing any warrant directed to the sheriff of any county in this state commanding him to levy upon and sell any real or personal property of said defendant within his county and directing him to levy upon and sell any real or

personal property of said defendant within his county and directing him to file said warrant with the clerk of the superior court, and taking any action whatever against said defendant for the collection of any tax imposed under said chapter 191; and from in any manner proceeding against said defendant under Section 23 of said chapter 191, or otherwise, for failure or refusal of said defendant to obtain any license to do business in this state, or for failing or refusing to make any return provided for in said Section 23, or for failure or refusal to pay such tax, or any part thereof, claimed to be due or payable under said chapter; and further praying that plaintiff have a temporary interlocutory and final injunction restraining said defendant and its agents and employes from doing any of said matters or things aforesaid pending the trial of said cause No. 512.

That no restraining order or interlocutory injunction or permanent injunction, or restraining order or decree of any kind has been entered in said cause No. 512 and that no final hearing of said defendant's application for said inter- [fol. 9] locutory injunction or application for said permanent injunction has as yet been had in said cause No. 512.

(6) That in said cause No. 512 defendant alleges in its verified complaint, among other things, (a) that the amount in controversy therein exceeds, exclusive of interest and costs the sum or value of $3,000; (b) that defendant owns and operates a system of steam railways in Washington and other states, as a common carrier, and as such, does both interstate and intrastate business, and for a long time has made no net income from its intrastate business but has lost money thereon, and if required to pay the tax imposed by said chapter 191, it will be compelled to pay the same from its receipts from interstate business; (c) that it is not permitted by law to retire from its intrastate without also retiring from its interstate business carried on in Washington, and cannot lawfully be taxed for the privilege of conducting a business from which it is not at liberty to retire; (d) that its interstate and intrastate freight and passenger traffic is carried on the same trains and over the same rails, and by means of the same equipment, and that should it surrender its intrastate business, its operating expenses would not be appreciably reduced

and would necessitate an increase of its interstate rates; and (e) that the definition of "gross income" as set forth in section one of said chapter 191 is too vague and indefinite to afford the basis for the computation of a valid tax for any amount whatever, for all of which reasons the tax attempted to be imposed on defendant by said chapter 191 is alleged by said defendant to be void and unconstitutional as against defendant, as an unlawful burden on interstate commerce, and violative of the commerce clause and 14th Amendment of the United States Constitution, and that defendant has no plain, speedy and adequate remedy at law.

Wherefore, plaintiff prays judgment against defendant (a) for $21,061.44, and such other and further amounts of [fol. 10] taxes as the court shall find upon the trial of this action to have become due and owing from defendant to plaintiff under the provisions of said chapter 191, by reason of gross income received by said defendant between August 1st, 1933 and December 31st, 1933, inclusive, (b) for ten per cent. of the amount of such unpaid taxes as and for a penalty for the non-payment thereof when due, (c) for interest at one (1) per cent. per month on the several amounts of such taxes from the dates when the same became due and payable, (d) for its costs of suit herein, and (e) for such other and further relief as to the court may seem meet and equitable in the premises.

Plaintiff further prays that an order be forthwith entered by this court staying any further proceedings by said Hedges and Jenner, or either of them, or their agents or employes, against said defendant or its agents or employes, under or by virtue of said chapter 191 pending the final determination of this action.

G. W. Hamilton, Attorney General; R. G. Sharpe, Assistant Attorney General, Attorneys for Plaintiff.

[fol. 11] *Duly sworn to by G. W. Hamilton. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 12] IN SUPERIOR COURT OF THURSTON COUNTY

[Title omitted]

ANSWER—Filed March 20, 1934

Now comes the Great Northern Railway Company, a corporation, defendant above named, and for its answer to the complaint herein admits, denies and alleges as follows:

I

It admits the allegations of Paragraph I thereof, except that it denies that it was, or now is, engaged in the business of a light and power, telephone or telegraph company as therein alleged, or otherwise.

II

It admits the allegations of Paragraph II thereof.

III

It denies each and every allegation, matter and thing contained in Paragraphs III and IV thereof, except that it admits that it has not paid any amount for or on account of taxes under said Chapter 191, and specifically denies that it is taxable in any amount whatever under said Chapter 191, and specifically denies that the amount set forth in said paragraphs, or any amounts whatever, are due and owing from it to plaintiff, and further specifically denies that any penalty, by way of interest or otherwise, is due and owing from it to plaintiff.

IV

It admits the allegations of Paragraphs V and VI thereof.

[fol. 13] First Affirmative Defense

Further answering said complaint, and as a first affirmative defense to the alleged cause of action therein contained, defendant alleges:

I

At all times herein mentioned defendant was, and now is, a railroad corporation, duly organized and existing

under and by virtue of the laws of the State of Minnesota, and prior to any of the times herein mentioned, complied with the laws of the State of Washington relating to foreign corporations doing business in said state, and appointed its Resident Agent in Washington, and has ever since maintained said agent in said state and paid all annual license fees from time to time becoming due from it to said state, including the annual license fees last due.

II

At all times herein mentioned the defendant was and now is a common carrier, engaged in and conducting the business of a steam railway. At all of said times the defendant owned and operated, and now owns and operates a transportation system of railway lines and branches, having its eastern termini at St. Paul and Duluth in the State of Minnesota, and Superior in the State of Wisconsin, and extending westerly from said termini through the States of Minnesota, North and South Dakota, Iowa, Montana, Idaho, Washington, Oregon, California and the Dominion of Canada, with its western termini at Seattle and Tacoma, in the State of Washington, Portland in the State of Oregon, and Vancouver in the Province of British Columbia, Dominion of Canada. Said line of railroad was constructed more than thirty-five years ago, and is now and for more than thirty-five years last past has been, a public utility devoted to and used for the transportation of passengers and freight, both intrastate and interstate, and for the transportation of the United States mails, and has been, and is now, an instrumentality of interstate commerce and of the [fol. 14] commerce of the government of the United States, and was and is subject to the act of Congress approved February 4, 1887, entitled "An Act to Regulate Commerce", and acts amendatory thereof and supplemental thereto; and was, and is also, in respect to intrastate transportation performed by it within the State of Washington, subject to the "Public Service Commission law" of said state, consisting of Chapter 117 of the Washington Session Laws of 1911 and acts amendatory thereof and supplemental thereto.

III

Chapter 191, Laws of 1933, is entitled as follows:

"Occupation Tax

An Act relating to taxation; imposing taxes upon the privilege of engaging in business activities and providing for the ascertainment, assessment, collection and distribution thereof; providing for the administration and enforcement of this act; providing penalties; making appropriations; and declaring that this act shall take effect immediately."

Section 1 (6) defines "gross income" as follows:

"(6) The term 'gross income' means the value proceeding or accruing from the sale of tangible property, real or personal, or service or both and all receipts, actually received by reason of the investment of the capital of the business engaged in, including interest, discount, rentals, royalties, fees or other emoluments however designated and without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest or discount paid or any other expenses whatsoever and without any deduction on account of losses: Provided, The term 'gross income' shall not include any payments received on accounts or notes outstanding at the time this act goes into effect."

Section 1 (7) defines the word "business as follows:

"(7) The word 'business' shall include all activities engaged in with the object of gain, benefit or advantage either direct or indirect, and not excepting subactivities producing marketable commodities used or consumed in the main business activity, each of which subactivities shall be considered business engaged in, taxable in the class in which it falls."

Section 2 (2), pages 871 provides that from and after the first day of August, 1933, and until the thirty-first day of July, 1935, there is hereby levied and there shall be col- [fol. 15] lected from every person (and corporation) an annual tax or excise for the privilege of engaging in business activities" in the State of Washington, measured by

a percentage of "gross income" of the business activities described in Section 2, and by said Section 2 (2) (e), page 873, a tax of 1½% of said gross income is imposed on steam railways "for the privilege of engaging" in business in this state. By Section 5, page 879 of said act, there is excepted from taxable gross income so much as is received from the United States, the State of Washington, "or from business which the State of Washington is prohibited from taxing under the Constitution of this state or the constitution or laws of the United States." Defendant is informed and believes and alleges that plaintiff construes said act as not applying to the gross income from interstate business, but pretends that the same applies to the gross income from defendant's business local to and within the State of Washington, and that defendant owes and must pay 1½% of said gross income from local business for the privilege of doing said local business in this state.

IV

Defendant's system of railway was constructed and equipped many years before the enactment of Chapter 191, Laws of 1933, and defendant has expended therefor more than One Hundred Million Dollars in order to provide adequate facilities for the transportation of both interstate and intrastate commerce and the United States mails. Long after said system of railway has been constructed and equipped there was enacted by the legislature of the State of Washington Chapter 81, Washington Session Laws of 1905, followed by the enactment of Chapter 117, Washington Session Laws of 1911, known as the "Public Service Commission Law", and under and by said law and by Article XII, Sections 13, 14 and 15 of the Constitution of the State of Washington, there is imposed on defendant an ineluctable obligation to devote its railroad to the service [fol. 16] of the people of the State of Washington in the transportation of passengers and property in local commerce between places wholly within the State of Washington, from which service it cannot withdraw while continuing to carry on its interstate commerce. Defendant's railroad system comprises approximately 10,541 miles of track, of which approximately 1450 miles are in the State of Washington. Defendant is taxed in the State of Washington under and by virtue of Chapter 130, Washington Special

Session Laws of 1925, on its fair market value, considered as a going concern, including all of its property, real, personal and mixed, and all of its rights and franchises of every kind and nature whatsoever. Ad valorem taxes so levied for the year 1933, payable in the year 1934, are approximately $1,250,000. Defendant is also required by Chapter 107, Laws of 1929, to pay to the Department of Public Works of Washington one-tenth of 1% of its gross revenue as an inspection and supervision fee. Said inspection fee, payable for the year 1933, will be approximately $3100. Said tax of 1½% of gross income imposed by said Chapter 191, Laws of 1933, is not a property tax, nor in lieu of a property tax, nor an inspection or supervision tax, but is an excise tax imposed solely for the privilege of doing local business within the State of Washington, which tax it cannot escape by abandonment of said local business while continuing to carry on its interstate commerce in said state.

V

Defendant's local business is conducted at a loss, and said tax, if paid, will have to be paid out of the earnings from interstate commerce and from its property located outside the State of Washington. The definitions of "gross income" and "business" in said Chapter 191, Laws of 1933, are so vague, indefinite and uncertain as to render it impossible for defendant to compute, with certainty, the amount of the tax, if anything, due the State, and neither the State Tax Commission nor plaintiff, prior to the com- [fol. 17] mencement of this action, either determined or assessed the tax claimed to be due from defendant, or advised defendant the amount, if anything, which they claim defendant owes for the privilege of doing local business in this state.

VI

For all of said reasons the tax imposed upon defendant by said statute is a burden upon interstate commerce, is unreasonable, oppressive and confiscatory, takes defendant's property without due process of law, and denies to the defendant the equal protection of the laws, in violation of Article I, Sections 8 and 10 and Article VI, also of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

Second Affirmative Defense

Further answering said complaint, and as a second and further affirmative defense to the alleged cause of action therein contained, defendant alleges:

I

It hereby adopts and realleges Paragraphs I, II, III and IV of its first affirmative defense as Paragraphs I to IV, inclusive, of this, its second affirmative defense.

V

By said Chapter 117, Session Laws of 1911, there was created an administrative tribunal, called the Public Service Commission, with the usual powers of regulation and supervision of public utilities, including common carriers by railroad, and the powers and duties of the Railroad Commission, which was created by said Chapter 81, Laws of 1905, were transferred to said Public Service Commission. Chapter 7, Session Laws 1921, known as the "Administrative Code" (Sections 10759 to 10898, inclusive, R. C. S.) created an administrative tribunal known as the Department of Public Works, under the general supervision of a Director of Public Works. The functions of the Public Service Commission with respect to common carriers by [fol. 18] rail were transferred by Section 25 of said Chapter 7, Laws of 1921 (Section 10735 R. C. S.) to the Director of Public Works. Defendant's investment in its line of railway was made to provide adequate facilities for the handling of both interstate and intrastate commerce, and a substantial part thereof was made by order of the Railway Commission of Washington and its successors, the Public Service Commission and the Department of Public Works, for the purpose of equipping its property to comply with said Public Service Commission law and acts amendatory thereof.

Since the Constitution of the State of Washington and said statutes and acts amendatory of said statutes and supplemental thereto, impose upon defendant an ineluctable obligation to devote its property to the service of the people of said state in intrastate transportation, from which is cannot withdraw and at the same time continue to carry on its business as a common carrier in interstate commerce,

any tax sought to be imposed upon it under and by virtue of said Chapter 191, Laws of 1933, and the tax sought to be recovered by plaintiff from defendant in the within entitled action, would and does constitute a burden upon, and an attempt to regulate, interstate commerce in violation of Article I, Sections 8 and 10, and Article VI of the Constitution of the United States and of the acts of Congress regulating interstate commerce, particularly Section 1 (18) (21), Section 13, Section 15A and Section 19A thereof, and of the Emergency Railway Transportation Act of 1933.

Third Affirmative Defense

Further answering said complaint, and as a Third and Further Affirmative Defense to the alleged cause of action therein contained, defendant alleges:

I

It hereby adopts and realleges Paragraphs I, II, III and IV of its First Affirmative Defense herein, and Paragraph [fol. 19] V of its second affirmative defense herein, as Paragraphs I to V, inclusive, of this, its third affirmative defense.

VI

At all times herein mentioned this defendant was, and now is engaged in and conducting interstate and intrastate commerce in the State of Washington, and was and is subject to the Act of Congress approved February 4, 1887, entitled, "An Act to Regulate Commerce," and acts amendatory thereof and supplemental thereto. By said acts of Congress regulating interstate commerce, particularly Section 1 (18) to (21), Section 13, Section 15A and Section 19A thereof, and the Emergency Railway Transportation Act of 1933, there is imposed upon defendant an obligation to devote its property to the service of the people of said State of Washington and of the United States, in both interstate and intrastate transportation, from which it cannot withdraw and at the same time continue to carry on its business as a common carrier in interstate commerce, and for said reason said Chapter 191, Laws of 1933, and the tax purported to be imposed thereby on defendant imposes a burden upon, and constitutes an attempt to regulate interstate commerce, in violation of Article I, Sections 8 and 10,

and Article VI of the Constitution of the United States and of said acts of Congress regulating interstate commerce.

Fourth Affirmative Defense

Further answering said complaint, and as a further and Fourth Affirmative Defense to the cause of action therein alleged, defendant alleges:

I

It hereby adopts and realleges Paragraphs I, II, III and IV of its First Affirmative Defense herein, Paragraph V of its Second Affirmative Defense herein, and Paragraph VI of its Third Affirmative Defense herein, as Paragraphs I to VI of this, its Fourth Affirmative Defense.

[fol. 20] VII

Defendant, as an interstate carrier, subject to the acts of Congress regulating interstate commerce, keeps its accounts as required by the Interstate Commerce Commission.

Defendant's gross railway operating revenues and expenses within the State of Washington for both local and interstate business, ad valorem taxes in Washington, and the inspection fee paid to the Department of Public Works of Washington for the years 1932 and 1933, were as follows:

1932:

Revenues	$8,389,154.17
Expenses	7,682,590.35
Ad Valorem Taxes	1,569,161.71
Inspection Fee	3,338.97

1933:

Revenues	$8,114,350.47
Expenses	7,102,133.30
Ad Valorem Taxes	1,250,941.47
Inspection Fee	3,137.05

Defendant's gross railway operating revenues from local and interstate business in the State of Washington for the years 1932 and 1933, separately stated, were as follows:

1932:

Local	$3,338,973.43
Interstate	5,050,180.74

1933:

Local	$3,137,046.87
Interstate	4,977,303.60

The revenues assigned to the State of Washington, as aforesaid, comprise the entire revenue accruing from business local to said state, plus a mileage proportion of interstate revenue as is customary in apportioning revenues to a state by carriers subject to the Interstate Commerce Act, and includes also the entire revenue from switching and demurrage accruing in said state, whether from local or [fol. 21] interstate business. The aforesaid expenses, assigned to said state, are those incurred in the State of Washington which are wholly applicable to local business in said state, plus a mileage proportion of expenses which are applicable to all traffic, whether state or interstate, and which cannot be localized. This method of apportionment is also in accordance with the method prescribed by the Department of Public Works of the State of Washington; said method has been followed for more than twenty years, and is as accurate as is possible, in view of the inseparable nature of the two classes of business.

Expenses incurred in the State of Washington cannot be mathematically divided between local and interstate business, because of the inseparable nature of the two kinds of business, which are carried on the same lines of railroad, in the same trains and cars, operated by the same employes, but local business is relatively short haul, incurs two terminal expenses within the state, while interstate business incurs but one terminal expense; local business uses more expensive terminal facilities in its handling from large distributing centers; clerical and warehouse expense is greater; damage to freight is greater; an excess of equipment is used for loading and unloading; car and engine miles per day are less; local trains are lighter, and the wear and tear on the equipment is greater, because of frequent starting and stopping, there is more switching, resulting in increased cost and greater damage to equipment; local

trains are on the road more and consume more fuel per mile; local short hauls are irregular and the facilities are used to less capacity. While the revenue per ton mile of local business, as compared with the revenue per ton mile of interstate business, is about 2 to 1, the expense of doing local business per unit of freight is more than twice as much as the cost of doing interstate business, and the expense of [fol. 22] said local business is in excess of revenue received therefrom, and for all of these reasons local business is more than twice as expensive in proportion to revenue as interstate business.

The cost of maintaining and operating defendant's line of railroad in the State of Washington during the years 1932 and 1933 exceeded the gross operating revenues of defendant in said state (interstate and intrastate, both inclusive), and the tax payments, both ad valorem and inspection fee, by it heretofore made and currently made in said state, have been and will be paid from revenues obtained at least in part outside the State of Washington. During recent years, and at the present time, the railroads in said state, including this defendant, have been and must continue to be compelled to compete under existing laws for traffic and business with motor carrier operators, both passenger, freight and express, and the operations of said motor carriers have been and are subsidized by the State of Washington, in that said state affords said motor carriers the use of highways throughout said state that were constructed at costs aggregating tens of millions of dollars, and that no substantial charge by the state has been made in the past, or is imposed by existing law upon said motor carrier competitors for the use of said highways, and that in said circumstances it has been, and is impossible to increase the general schedule of rates for said railroad service to such extent as to result in any substantial net railway operating income; that grain constitutes a large part of the tonnage of said railway operations of said defendant in said state, both local and interstate, and that there is now pending before the Interstate Commerce Commission for decision, in a case wherein the Department of Public Works of Washington participated, an attack upon existing rates of defendant on grain, which, if it results in any substantial decrease in rates, will operate to reduce the gross operating income of this defendant in Washington from its

[fol. 23] railroad operations in Washington, and to increase the already large deficits that have been and are being incurred annually in said railroad operations in said state.

VIII

Defendant's interstate and local business is inseparably commingled and mutually dependent. For the year 1932 its gross freight revenue (Account 101 of the Uniform System of Accounts) for business done in the State of Washington was $6,351,791, of which $2,647,436 was from local and $3,704,355 from interstate business. For said year the intrastate revenue ton miles were 120,000,000 and the interstate revenue ton miles in said state were 402,000,000, in round numbers. For the seven day period ending March 9, 1932, a representative period, its local revenue net ton miles were 1,970,577 and interstate revenue net ton miles were 7,090,421, or 21.75% and 78.25%, respectively; and of the local revenue net ton miles 1,031,846 were eastbound and 938,731 were westbound; and of the interstate revenue net ton miles 4,913,165 were eastbound and 2,177,256 westbound.

Both classes of business, local and interstate, both eastbound and westbound, were transported by defendant over the same lines of railroad, in the same trains, operated by the same employes, and with the same facilities, and it is not possible, practically and economically, or at all, to transport local freight business separately from interstate freight business by different lines of railroad, in different trains, or by means of different instrumentalities or employes.

For the year 1932 defendant's gross income from the transportation of passengers in the State of Washington (Account 102 of the Uniform System of Accounts) was $1,008,523, of which $357,303 was from local, and $651,220 was from interstate business; the number of revenue passengers carried during the said year in said state was 253,988, of which 105,765 were carried locally, and 148,223 inter- [fols. 24 & 25] state. The number of revenue passenger revenue miles was 42,339,199, of which 12,467,660 were local and 29,871,539 interstate. Much the larger part of said passengers were carried in interstate through trains east and westbound, and on interstate through trains north and southbound. It is not possible to carry said local and inter-

state passengers on separate trains, and the facts with respect thereto are identical with the facts alleged in respect to defendant's freight traffic. Defendant does not now have statistics for the year 1933, but they are and will be approximately the same as those for the year 1932, as hereinabove stated.

If defendant could and should abandon its local freight business, it could and would reduce its train service, and would thereby reduce its direct expenses approximately $190,659 and reduce its car mileage and save approximately $58,046, a total reduction of direct expenses applicable to its local and interstate Washington freight business of approximately $248,705, but would lose its entire gross revenue from local freight business of $2,647,436. These figures are based upon operations for the year 1932, but will be and are approximately the same for the year 1933. Defendant estimates that some reduction in passenger train service could be effected if local business were to be discontinued, which would result in a further estimated saving in direct expenses of $218,652, based on 1932 operations, but it would lose its entire gross revenue from local passenger transportation, which for the year 1932, amounted to $357,303, all of which will be approximately the same for the year 1933. The net result of abandonment by defendant of its local passenger and freight business, in order to escape the tax imposed by said Chapter 191, Laws of 1933, would be as shown by the following tabulation:

[fol. 26] State of Washington

Operating Revenue—Local, 1932

Freight revenues—Account 101	$2,647,436.00
Passenger " " 102	357,303.00
Other Operating revenues	334,234.00
Total	$3,338,973.00
Estimated reduction in operating expenses	467,357.00
Net Loss of Income	2,871,616.00
Interstate gross income	5,050,181.00
Expenses (as reduced)	7,215,233.00
Washington taxes	1,569,161.71
Loss on interstate business	3,734,213.71

Therefore, if defendant could and should abandon its local freight and passenger business, the entire burden of maintaining and operating its interstate system of railroad, constructed and equipped to handle both interstate and local commerce, would fall entirely on interstate business, and would necessitate an increase of rates and fares greater than the same could bear, as a practical matter, or at all, and would result in the destruction of an essential instrument of interstate commerce, and of the transportation of the mails, troops and munitions of the United States, and of the value of its property, to the amount of more than One Hundred Million Dollars.

IX

The amount which would be payable by the defendant as a tax of 1½% of its gross income for the months of August to December, 1933, inclusive, under said Chapter 191, Laws of 1933, is approximately as shown in the figures set forth at the top of page 4 of plaintiff's complaint herein. Defendant's railroad is well located and economically managed. It serves the principal cities and towns of the state. [fol. 27] The operation of its railroad in local business is essential to the people of the State of Washington and of the United States. Most of defendant's local rates cannot be raised because of competition from other kinds of transportation. Under the law such rates cannot be raised without the consent of the Department of Public Works. Defendant has heretofore applied for an increase of certain local rates, and said application was denied by said Department of Public Works, as appears from a copy of its order hereto attached, marked Exhibit "A" and made a part hereof. Since defendant filed the suit in the District Court of the United States for the Western District of Washington, referred to in plaintiff's complaint, Senate Bill 18 was introduced at the Special 1933 Session of the legislature of said state, which bill was prepared and enactment urged by attorneys representing the State of Washington, for the purpose of relieving defendant from the obligation of doing local business, and to meet defendant's contention in said case and in this case that it is so obligated, but that bill was rejected by the legislature. A copy of said bill is hereto attached, marked Exhibit "B", and made a part hereof.

X

The tax imposed by said Chapter 191, Laws of 1933, on the pretext of a tax or fee for the privilege of doing local business in Washington, is in reality a tax and burden upon interstate commerce, and upon the gross revenues received by defendant therefrom, in that said tax, if paid, would have to be paid out of the earnings of defendant from its interstate business, and is a tax upon its business done and upon income earned in other states, and upon property of the defendant located outside the State of Washington, which tax it cannot avoid by withdrawing its property from use in local commerce within the State of Washington, either under said Public Service Commission law of the State of Washington, and the amendments thereof, under the Constitution of the State of Washington, under the acts of Congress regulating interstate commerce, or as a practical [fol. 28] matter, or at all, and said tax is in violation of the Constitution of the United States, in that it imposes a burden upon, and interferes with the exercise of governmental powers of the Federal Government, to-wit, the transportation of the United States mails, troops, and munitions of the United States, and is in violation of Article I, Sections 8 and 10, and Article VI, also the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and of the acts of Congress regulating interstate commerce, particularly Section 1 (18) (21), Section 13, Section 15A and Section 19A thereof, and of the Emergency Railway Transportation Act of 1933, approved June 16, 1933.

Wherefore, defendant prays judgment that plaintiff take nothing in this action, and that it be hence dismissed, with its costs and disbursements herein.

Thomas Balmer, Edwin C. Matthias, Attorneys for Defendant.

Duly sworn to by Edwin C. Matthias. Jurat omitted in printing.

[fol. 29] EXHIBIT "A" TO ANSWER

Before the Department of Public Works of Washington

No. 6484

In the Matter of the Application of Common Carrier Railroads for Fifteen Per Cent Increase in Freight Rates in the State of Washington

First Supplemental Findings of Fact and Order

On December 17, 1931 the department entered an order providing for emergency increases in intrastate freight rates and charges in Washington to expire March 31, 1933. The increases ordered were in conformity with increased rates and charges authorized by the Interstate Commerce Commission, hereinafter called the Commission, in Ex Parte 103, 178 I. C. C. 539, and 179 I. C. C. 215, for the same period. On January 13, 1933, the applicants filed with us a supplemental petition requesting authority to continue in effect the emergency rates and charges so authorized until September 30, 1933. The Commission on March 7, 1933 issued a mimeographed report authorizing extension to September 30, 1933 of the emergency interstate rates and charges. A hearing was held by the department in Seattle April 12 and 13, 1933.

Testimony and exhibits were presented by the applicants showing that their financial condition has not improved since the emergency charges were given effect and that for the calendar year 1932 their income decreased substantially compared with the previous year. The applicants while turning over the proceeds of the so-called surcharge to the Railroad Credit Corporation have received no assistance from nor availed themselves of the credit facilities afforded by that corporation.

Since January 4, 1932, the basic rates covering innumerable individual point to point items of traffic, many of which move in volume, such as iron and steel articles, canned goods, sugar, petroleum and its products, cement, lumber, pulpwood, paper, etc., have been substantially reduced and in a great many instances the surcharge has been eliminated for the purpose of meeting the competition of highway carriers and other modes of transportation. Applicants have

by no means uniformly adopted this practice. In other words, the surcharge has been removed upon the movement of a particular commodity between specific points, but it has been retained upon the same commodity between other points. Applicants have declined to remove the surcharge on certain commodities moving freely over the highways. The record shows a considerable and ever increasing movement of coal produced in King and Pierce Counties by truck, but producers interested in maintaining the rail movement from western Washington mines have been unable to induce applicants to waive the surcharge on their traffic to retain it for rail movement.

We are of the opinion and find that this rate adjustment policy generally indulged in by the applicants between January 4, 1932 and March 31, 1933 resulted in undue preference and advantage to certain persons and localities and subjected other persons and localities to undue prejudice and disadvantage prohibited by section 21 of the public [fol. 30] service laws of Washington. Protests were made by witnesses as to the continuance of the surcharge on coal, lumber and other commodities. The record before the Commission and the decision of that body were made a part of the record in the instant proceeding. That record shows that vigorous opposition was offered by the witnesses representing basic commodities as well as many other lines of traffic. We are entirely in accord with the attitude of the four dissenting members of the Commission and are of the opinion that continuance of the surcharge even for a few months longer will be burdensome and irritating to the public, of no real benefit to applicants as to revenue results therefrom and will tend to deflect more traffic from the applicants' facilities to other modes of transportation. It is a matter of common knowledge that the present level of rail rates is too high to permit freedom of movement by rail. Pursuant to petitions from shippers of basic commodities throughout the United States, the Commission has recently ordered under its Docket 26000 a general investigation in the matter of rates and charges of carriers by railroad, subject to its jurisdiction, to determine what reductions may be made in them.

The surcharge authorized does not apply on any of the important agricultural products carried in Washington. Its voluntary removal by the applicants on many other com-

modities which move in volume indicates that the preponderance of Washington intrastate traffic will be either unaffected by, or not susceptible to its application.

We find that a continuance of the effectiveness of the emergency freight rates and charges authorized by our order dated December 17, 1931, to expire March 31, 1933, is not necessary to prevent injury to the interests of the public or to the applicants under existing conditions.

Order

Wherefore it is ordered that the application herein be and the same is hereby denied.

Witness the Department of Public Works of Washington, this 27th day of April, 1933.

Department of Public Works of Washington, E. K. Murray, Director; W. D. Lane, Supervisor of Transportation; Frank Purse, Supervisor of Public Utilities.

[fol. 31] EXHIBIT "B" TO ANSWER

In the Senate—By Senator Mehner

Senate Bill No. 18

State of Washington, Extraordinary Session, 1933

December 8, 1933, read first and second time, ordered printed, and referred to Committee on Public Utilities.

An Act permitting public service companies engaged in interstate commerce to withdraw from certain kinds of business, and providing that this act shall take effect immediately

Be it enacted by the Legislature of the State of Washington:

Section 1. That any public service company engaged in interstate commerce, including any steam railway company, electric railway company, light company, power company, telephone company, telegraph company, express company, car company, or company engaged in transporting freight

or passengers for hire upon the public highways of this state, is hereby permitted to renounce and withdraw from the whole (but not a part only) of that part of its business carried on in the state of Washington which does not constitute interstate commerce. The word "company" as used in this act shall mean any individual, firm, copartnership, joint venture, association, corporation, trust or any other group or company acting as a unit, whether mutual, cooperative or otherwise.

Sec. 2. The renunciation provided for in section one hereof shall be in writing, signed and acknowledged by such company or its duly authorized agents and filed with the department of public works of the state of Washington, and shall declare that the said company elects to renounce all local business in the state of Washington after the date set forth therein. After the date so fixed, it shall be unlawful for said company to carry on any business whatsoever in the state of Washington other than interstate business, without the consent of the officers of the state of Washington and of the United States having power to authorize the same.

Sec. 3. This act is necessary for the immediate support of the state government and its existing public institutions and shall take effect immediately.

[File endorsement omitted.]

[fol. 32] [File endorsements omitted]

IN SUPERIOR COURT OF THURSTON COUNTY

[Title omitted]

DEFENDANT'S SUPPLEMENTAL ANSWER AMENDING FOURTH AFFIRMATIVE DEFENSE—Filed Oct. 16, 1934

Comes now the defendant, and by leave of court first had and obtained, files this its Supplemental Answer amending and superseding the Fourth Affirmative Defense contained in its original Answer herein, and as its Fourth Affirmative Defense to the so-called cause of action contained in plaintiff's complaint alleges:

I

It hereby adopts and realleges Paragraphs I, II, III and IV of its First Affirmative Defense herein, Paragraph V of its Second Affirmative Defense herein, and Paragraph VI of its Third Affirmative Defense herein, as Paragraphs I to VI of this, its Fourth Affirmative Defense.

VII

Defendant as an interstate carrier subject to the acts of Congress regulating interstate commerce keeps its accounts of system revenues and expenses as required by the Interstate Commerce Commission. Since the filing of its original answer herein the defendant has made a study to determine the revenues earned from intrastate business conducted by it in the State of Washington, and the expenses of conducting said business in the year 1933, and defendant alleges that said intrastate business in Washington is conducted at a loss and that the tax imposed by Chapter 191, Laws 1933, if paid, will have to be paid out of its earnings from interstate commerce and from its earnings from property located outside the State of Washington. [fol. 33] Defendant's total operating revenues and expenses from intrastate business in the State of Washington for the year 1933, were as follows:

Revenues	$1,890,533
Expenses	2,008,316
Deficit	117,783

Defendant's gross railway operating revenues and expenses within the State of Washington for both local and interstate business, ad valorem taxes in Washington and the inspection fee paid to the Department of Public Works of Washington for the year 1933, were as follows:

1933:	
Revenues	$8,114,350.47
Expenses	7,102,133.30
Ad valorem taxes	1,250,941.47
Inspection fee	3,137.05

The cost of maintaining and operating defendant's line of railroad in the State of Washington during the years 1932 and 1933 exceeded the gross operating revenues of

defendant in said state (interstate and intrastate, both inclusive), and the tax payments, both ad valorem and inspection fee, by it heretofore made and currently made in said state, have been and will be paid from revenues obtained at least in part outside the State of Washington. During recent years, and at the present time, the railroads in said state, including this defendant, have been and must continue to be compelled to compete under existing laws for traffic and business with motor carrier operators, both passenger, freight and express, and the operations of said motor carriers have been and are subsidized by the State of Washington, in that said state affords said motor carriers the use of highways throughout said state that were constructed at costs aggregating tens of millions of dollars, and that no substantial charge by the state has been made in the past, or is imposed by existing law upon said motor carrier competitors for the use of said highways, and that in said circumstances it has been, and is impossible [fol. 34] to increase the general schedule of rates for said railroad service to such extent as to result in any substantial net railway operating income; that grain constitutes a large part of the tonnage of said railway operations of said defendant in said state, both local and interstate, and that there is now pending before the Interstate Commerce Commission for decision, in a case wherein the Department of Public Works of Washington participated, an attack upon existing rates of defendant on grain, which, if it results in any substantial decrease in rates, will operate to reduce the gross operating income of this defendant in Washington from its railroad operations in Washington, and to increase the already large deficits that have been and are being incurred annually in said railroad operations in said state.

VIII

Defendant's interstate and local (or intrastate) business is inseparably commingled and mutually dependent. Both classes of business, local and interstate, both eastbound and westbound, were transported by defendant over the same lines of railroad, in the same trains, operated by the same employes, and with the same facilities, and it is not possible, practically and economically, or at all, to transport local freight business separately from intrastate

freight business by different lines of railroad, in different trains, or by means of different instrumentalities or employes. Much the larger part of the passengers on defendant's trains were carried in interstate through trains east and westbound, and on interstate through trains north and southbound. It is not possible to carry said local and interstate passengers on separate trains, and the facts with respect thereto are identical with the facts alleged in respect to defendant's freight traffic.

If defendant could and should abandon its local freight business, it could and would somewhat reduce its train service and its car mileage and save some direct expense applicable to its local and interstate Washington freight business, but would lose its entire gross revenue from local [fol. 35] freight business of $1,525,109. These figures are based upon operations for the year 1933, the latest available. Defendant estimates that some reduction in passenger train service could be effected if local business were to be discontinued, which would result in a further saving in direct expenses, but it would thereby lose its entire gross revenue from local passenger transportation, which for the year 1933 amounted to $365,424. The net result of abandonment by defendant of its local passenger and freight business, in order to escape the tax imposed by said Chapter 191, Laws of 1933, would be the loss of $1,890,533, and the saving of not more than fourteen per cent of that amount.

Therefore, if defendant could and should abandon its local freight and passenger business, the entire burden of maintaining and operating its interstate system of railroad, constructed and equipped to handle both interstate and local commerce, would fall entirely on interstate business, and would necessitate an increase of rates and fares greater than the same could bear, as a practical matter, or at all, and would result in the destruction of an essential instrument of interstate commerce, and of the transportation of the mails, troops and munitions of the United States, and of the value of its property to the amount of more than One Hundred Million Dollars.

IX

Defendant's railroad is well located and economically managed. It serves the principal cities and towns of the

state. The operation of its railroad in local business is essential to the people of the State of Washington and of the United States. Most of defendant's local rates cannot be raised because of competition from other kinds of transportation. Under the law such rates cannot be raised without the consent of the Department of Public Works. Defendant has heretofore applied for an increase of certain local rates, and said application was denied by said Department of Public Works, as appears from a copy of its order hereto attached, marked Exhibit "A" and made a part hereof. Since defendant filed the suit in the District [fol. 36] Court of the United States for the Eastern District of Washington, referred to in plaintiff's complaint, Senate Bill 18 was introduced at the Special 1933 Session of the legislature of said state, which bill was prepared and enactment urged by attorneys representing the State of Washington, for the purpose of relieving defendant from the obligation of doing local business, and to meet defendant's contention in said case and in this case that it is so obligated, but that bill was rejected by the legislature. A copy of said bill is hereto attached, marked Exhibit "B", and made a part hereof.

X

The tax imposed by said Chapter 191, Laws of 1933, on the pretext of a tax or fee for the privilege of doing local business in Washington, is in reality a tax and burden upon interstate commerce, and upon the gross revenues received by defendant therefrom, in that said tax, if paid, would have to be paid out of the earnings of defendant from its interstate business, and is a tax upon its business done and upon income earned in other states, and upon property of the defendant located outside the State of Washington, which tax it cannot avoid by withdrawing its property from use in local commerce within the State of Washington, either under said Public Service Commission law of the State of Washington, and the amendments thereof, under the Constitution of the State of Washington, under the Acts of Congress regulating interstate commerce, or as a practical matter, or at all, and said tax is in violation of the Constitution of the United States, in that it imposes a burden upon, and interferes with the exercise of governmental powers of the Federal Government, to-wit, the transporta-

tion of the United States mails, troops, and munitions of the United States, and is in violation of Article I, Sections 8 and 10, and Article VI, also the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and of the acts of Congress regulating interstate commerce, particularly Section 1 (18) (21), Section 13, Section 15A and Section 19A [fol. 37] thereof, and of the Emergency Railway Transportation Act of 1933, approved June 16, 1933.

Wherefore, defendant prays judgment that plaintiff take nothing in this action, and that it be hence dismissed, with its costs and disbursements herein.

Thomas Balmer, Edwin C. Matthias, Attorneys for Defendant.

[fol. 38] *Duly sworn to by Edwin C. Matthias. Jurat omitted in printing.*

[fols. 39 & 40] Exhibit "A" to supplemental answer omitted. Printed side page 29, ante.

[fol. 41] Exhibit "B" to supplemental answer omitted. Printed side page 31, ante.

[fol. 42] In Superior Court of Thurston County

[Title omitted]

Reply—Filed May 5, 1934

Comes now the plaintiff and replying to the allegations of defendant's answer—

(1) As to Paragraph III of defendant's first affirmative defense, plaintiff admits the enactment of said chapter 191, Laws of Washington of 1933, and the allegations of said paragraph as to the contents thereof, in so far, and only in so far, as the same correctly set forth the title and provisions of said chapter 191. Plaintiff admits that plaintiff

construes said act as not applying to the gross income from interstate business and that defendant owes and must pay 1½% of its gross income from defendant's intrastate business for the privilege of doing local business in Washington. Plaintiff denies each and every other allegation, matter and thing contained in said Paragraph III.

(2) As to Paragraph IV of defendant's first affirmative defense, plaintiff admits that defendant's system of railway was constructed and equipped many years before the enactment of said Chapter 191, and that defendant has expended more than $100,000,000 in its construction and equipment. Plaintiff admits the enactment of Chapter 81, Washington Session Laws of 1905, and Chapter 117, Washington Session Laws of 1911; admits that defendant is taxed in Washington under chapter 130, Washington Special Session Laws of 1925, on its fair market value and that the ad valorem taxes so levied for 1933 are approximately $1,250,000; admits that defendant is required by chapter [fol. 43] 107, Laws of 1929, to pay to the department of public works of Washington 1/10th of 1% of its gross intrastate revenues as an inspection and supervision fee and that said inspection fee, payable for 1933, will be approximately $3,100; and admits that the tax imposed by chapter 191, Laws of 1933, is not a property tax. Plaintiff denies each and every other allegation, matter and thing contained in said paragraph IV.

(3) As to paragraphs V and VI of defendant's first affirmative defense, plaintiff denies each and every allegation, matter and thing therein contained.

(4) As to paragraph V of defendant's second affirmative defense, plaintiff admits the enactment of the several statutes therein alleged but denies any knowledge or information sufficient to form a belief as to whether any part, substantial or otherwise, of defendant's investment in its line of railway was made by order of the Railroad Commission of Washington and/or its successors, or for the purpose of equipping its property to comply with said public service commission law and the acts amendatory thereof. Except as hereinabove admitted and denied on information and belief, plaintiff denies each and every allegation, matter and thing contained in said paragraph V.

(5) As to paragraph VI of defendant's third affirmative defense, plaintiff admits that at all times therein mentioned defendant was and now is engaged in and conducting interstate and intrastate commerce in Washington, and was and is subject to the acts of Congress therein referred to, but denies each and every other allegation, matter and thing therein contained.

(6) As to Paragraph VII of defendant's third affirmative defense, plaintiff denies any knowledge or information sufficient to form a belief as to any of the items of statistical data therein contained, or as to whether defendant keeps its accounts as required by the interstate commerce commission; or as to how the defendant assigns or apportions revenues and expenses to the state of Washington. Plain-
[fol. 44] tiff admits that expenses cannot be divided between local and interstate business, and that the revenue per ton mile of local business, is at least 100% greater than the revenue per ton mile of defendant's interstate business apportioned on a mileage prorate. Except as hereinabove admitted and denied on information and belief, plaintiff denies each and every other allegation, matter and thing contained in said paragraph VII.

That for the reasons hereinafter alleged plaintiff avers that defendant's method of apportioning railway operating revenues and expenses to defendant's properties in Washington as alleged in said paragraph is unfair, unjust and inequitable to said Washington properties, and does not show the true revenues and expenses apportionable to said properties.

(7) As to Paragraph VIII of defendant's third affirmative defense, plaintiff denies any knowledge or information sufficient to form a belief as to any of the items of statistical data therein contained. Plaintiff denies that defendant's interstate and intrastate business is either inseparably commingled or mutually dependent; denies that the seven-day period ending March 9, 1932, was a representative period for comparing defendant's local revenue net ton miles with its interstate revenue net ton miles, or making any other comparisons between defendant's interstate and local business; denies that it is not possible or practicable to transport local freight business separately from interstate freight business either by different trains or by

means of different instrumentalities or employes; denies that it is not possible to carry local and interstate passengers on separate trains. Plaintiff denies any knowledge or information sufficient to form a belief as to any of the following allegations: that the statistics for 1933 will be approximately the same as set forth in said paragraph for 1932; the amount in which defendant's operating expenses incident to its freight business would be reduced were defendant to abandon its intrastate business in Washington either for 1932 or for 1933; the amount which defendants [fol. 45] would lose in case of such abandonment, in gross revenue from local freight business, either for 1932 or for 1933; the amount which defendant would save in operating expenses incident to its passenger business in case of such abandonment, either for 1932 or for 1933; the amount which defendant would lose in case of such abandonment, in gross revenues incident to passenger business, either for 1932 or for 1933. Except as hereinbefore admitted or denied on information and belief, plaintiff denies each and every allegation, matter and thing contained in said paragraph VIII.

(8) As to Paragraph IX of defendant's third affirmative defense, plaintiff admits the first three sentences thereof but denies that the operation of defendant's railroad in local business is essential to the people of the state of Washington and of the United States; denies that there are any of defendant's local rates which defendant cannot raise sufficient to cover the amount of said occupation tax either because of competition of other kinds of transportation or for any other reason; admits that Senate Bill 18 was introduced at the Special 1933 Session of the legislature of Washington. Except as hereinabove admitted, plaintiff denies each and every allegation, matter and thing contained in said paragraph IX.

(9) As to Paragraph X of defendant's third affirmative defense, plaintiff denies each and every allegation, matter and thing therein contained.

As and for a first affirmative reply to the matters set forth in defendant's answer, plaintiff alleges:

(1) That the defendant has never applied to the department of public works of the state of Washington for per-

mission to renounce its interstate business in the state of Washington.

As and for a second affirmative reply to the matters set forth in defendant's answer, plaintiff alleges:

(1) That the defendant has never applied to the department of public works of the state of Washington for per- [fol. 46] mission to increase any of its rates or tariffs on the transportation of either freight or passengers between points within the state of Washington, or any of its other rates or tariffs, on the ground that its operating expenses would be or have been increased by reason of the occupation tax imposed on defendant by the provisions of chapter 191, Session Laws of the state of Washington for 1933.

As and for a third affirmative reply to the matters set forth in defendant's answer, plaintiff alleges:

That the total value of all the taxable property in the state as found by the state board of equalization for 1933 was the sum of $2,259,852,124, and the total assessed valuation of such property as fixed by the county assessors was $993,248,450, and total assessed valuation was found by said board to be 43.9519223 per cent of said total actual value of said taxable property.

That the total assessed valuation of said taxable property as fixed by the state board of equalization for the purpose of levying taxes for state purposes was $1,129,926,062, or 50 per cent of its actual value.

That in Table "A" are set forth in column (a) the various "funds" or divisions of expense incident to the support of government of the state of Washington for which, under the laws of the state of Washington, revenues are required to be raised by ad valorem taxes levied by the state board of equalization on the taxable property within the state of Washington.

That in column (b) of said table are set forth the several sums required to be raised for each of said "funds" for the support of state government as listed in said column (a), together with the total thereof, as found and determined by the state board of equalization meeting in September, 1933, plus the seventh year delinquencies as found by the state auditor.

That in column (c) of said table are set forth the number of mills in taxes which it would have been necessary to levy upon the assessed valuation of all of the taxable prop-
[fol. 47] erty in the state of Washington for the year 1933 in order to raise the several sums set forth in said column (b) together with the total thereof, had the total amount of such expense been raised by ad valorem taxes imposed on the taxable property of the state.

Table A

Name of Fund:	Amounts necessary to be raised for support of state government:	Millage necessary to raise sums listed in Col. (b)
(a)	(b)	(c)
Current School Fund	7,520,572	6.656 mills
University of Washington	1,702,265	1.506 mills
Washington State College	1,012,900	0.896 mills
Bellingham Normal School	301,333	0.267 mills
Cheney Normal School	254,811	0.226 mills
Ellensburg Normal School	185,028	0.164 mills
General Fund	3,178,395	2.813 mills
Veterans' Compensation	1,129,926	1.000 mills
Bond Retirement	.....	.....
Total of above funds	$15,285,230	13.528 mills
Plus Seventh Year Delinquencies	464,873	0.411
Total	$15,750,103	13.939 mills

That the total amount of taxes actually levied by the said state board of equalization for the year 1933 upon the assessed valuation of the taxable property within the state of Washington for the support of the state government at the meeting of said board in September, 1933, was the sum of $6,779,556, or a total levy of six mills only upon the assessed valuation for state tax purposes of said taxable property, and that the additional levy necessary to cover the said $464,873.13 of seventh year delinquencies would be 0.411 mills or a total levy of 6.411 mills, or 7.528 mills less than the total millage which would have been actually levied for said year on said property had the entire expense of state government plus such seventh year delin-
[fol. 48] quencies, been raised by the imposition of ad valorem taxes upon the taxable property of the state.

That the Northern Pacific Railway Company is hereinafter referred to as the "N. P."; the Great Northern Railway Company, as the "G. N."; the Oregon-Washington Railroad & Navigation Company, as the "O-W".; and the

Chicago, Milwaukee, St. Paul & Pacific Railroad Company, as the "Milwaukee";

That approximately all of the railroads located in Washington handling interstate commerce are now and for many years last past have been owned and operated by said companies.

That the tax commission of the state of Washington is hereinafter referred to as the "Tax Commission", the state board of equalization of the state of Washington as the "state board of equalization", and the state of Washington, as the "state".

That in column (a) of table "B" are set forth the names of said railway companies as above set forth; in column (b) of said table are set forth the value of the operating real and personal property of the companies named in column (a) as found by the state board of equalization for the year 1932; in column (c) of said table is set forth the value of the operating real and personal property of the said companies named in column (a) as found by the state board of equalization for the year 1933; and in column (d) of said table is set forth the several percentages which the several amounts set forth in said column (c) are of the respective amounts set forth in said column (b).

The valuation shown in said column (b) as to the "N. P." is that found by the court in litigation between said company and the counties in the federal court.

The valuation shown in said column (b) as to the "Milwaukee" is that fixed by the tax commission in a reassessment proceeding in 1933 as to the operating property of said company for 1932 and prior years.

[fol. 49]

Table B

Name of Company (a)	Valuation found for 1932 (b)	Valuation found for 1933 (c)	Percentages which 1933 valuation is of 1932 Valuation: (d)
N. P.	**$105,000,000	$100,450,000	95.666667%
G. N.	69,574,000	66,100,000	95.006755%
O. W.	43,070,000	39,100,000	90.782447%
Milwaukee	*38,439,000	34,250,000	89.102213%

* As fixed by tax commission in reassessment proceedings in 1933.
** As fixed by decree of U. S. district court.

That in column (a) of Table "C" are shown the names of said railroad companies; in column (b) are shown the

equalized assessed valuations of the operating real and personal property of the companies named in column (a) as fixed by the state board of equalization for the year 1933 for the purpose of levying taxes thereon for state purposes; in column (c) is shown the total amount of taxes for state purposes which would have been levied against said operating properties had the total amount of the expense of state government been raised by ad valorem taxation of the taxable property of the state, said amounts being computed by multiplying the assessed valuations shown in column (b) by .013939 representing the total millage heretofore shown in the last line of column (c), Table A; in column (d) are shown the total amounts of taxes for state purposes actually levied against said operating properties for the year 1933, said amounts being computed by multiplying the assessed valuation shown in column (b) by .006411, representing the maximum millage which can be levied for state purposes under chapter 4, Laws of 1933; and in column (e) is shown the several amounts by which the taxes which would have been levied against each said company's operating property for the year 1933 except for [fol. 50] the limitations of said chapter 4, Laws of 1933, exceeds the taxes actually levied on said property for state purposes for the year 1933, the same being computed by deducting the figures in column (d) from the figures in column (c)

Table C

Name of Company	1933 Equalized value of company's operating property for state tax purposes	Total tax which would have been levied except for Ch. 4, L. '33 (.013939 x Col. "B")	Total tax actually levied (.96411 x Col. "B")	Amount of reduction in state tax by reason of Ch. 4, L. '33 (Col. "c"–Col. "D")
(a)	(b)	(c)	(d)	(e)
N. P.....	$50,225,000	$700,086	$321,992	$378,094
G. N.....	33,050,000	460,684	211,884	248,800
O–W.....	19,550,000	272,507	125,335	147,172
Milwaukee.	17,125,000	238,705	109,788	128,917

That plaintiff is informed and believes, and therefore states the fact to be that the total amount of the occupation tax which would have been levied against said companies computed at 1½% of the total gross railway operating revenues of said companies for intrastate business for the whole of the year 1933 would have been not greater than the following amounts: By the N. P.: $90,000; by the G. N.:

$46,500; by the O-W.: $11,250; and by the Milwaukee $19,-350.

That at the head of columns (a), (b), (c) and (d) of Table "D" hereinafter appearing, is set forth the names of said companies hereinbefore mentioned.

That in line (1) of said table is set forth the total ad valorem taxes payable on each such company's operating property in the state for the year 1932, computed as hereinbefore described.

In line (2) of said table is set forth the percentage of each of said company's operating property's assessed valuation for 1933 of the assessed valuation of said property for the year 1932 computed as hereinbefore described and as set forth in column (d) of Table "B" herein.

[fol. 51] In line (3) is shown what each said company's total taxes for the year 1932 would have been had such taxes been based on the 1933 assessed valuation of said company's operating property. Said amounts are computed by multiplying the figures in line (1) by the decimal fractions in line (2) of said Table "D".

In line (4) of said table is shown the maximum total amount of ad valorem taxes which would be payable on each of said company's operating property for the year 1933 determined as hereinabove set forth.

In line (5) of said table are shown the total amount of occupation tax payable by each computed at 1½% of each of said company's gross railway operating revenues from intrastate business for the entire year 1933, had chapter 191, Laws of 1933, been effective for said entire year.

In line (6) of said table are shown as to each of such company the sum of such company's occupation tax if imposed for the whole of the year 1933, and the ad valorem tax payable on such company's operating property for the year 1933. These amounts are computed by adding the figures in line (4) to the figures in line (5).

In line (7) of said table is shown the minimum amount saved in taxes by each such company (including both ad valorem taxes and occupation taxes) for the year 1933 as compared with the ad valorem taxes payable by each such company (adjusted to 1933 assessed valuations) for the year 1932. These amounts are computed by subtracting the figures in line (6) from the figures in line (3).

In line (8) of said table is shown the ad valorem taxes

which would have been levied on the operating property of each said company for the year 1933 for state purposes only had it not been for the limitations of the 40-mill limit law (chapter 4, Laws 1933). These figures are set forth in column (c) of Table "C".

In line (9) of said table are shown the actual ad valorem taxes which will be levied on the operating property of each said company for the year 1933 for state purposes only by reason of the limitations of said chapter 4, Laws 1933. These figures are set forth in column (d) of Table [fol. 52] "C".

In line (10) of said table are again shown the amount of occupation tax as to each such company as theretofore shown in line (5) of said table.

In line (11) of said table are shown the sum of such occupation tax if imposed for the whole of the year 1933, and the ad valorem state tax payable on such company's operating property for the year 1933. These figures are computed by adding the figures in lines (9) and (10).

And in line (12) of said table are shown as to each such company the amount actually saved in state taxes alone (including both ad valorem taxes and occupational taxes) for the year 1933 as compared with the ad valorem state taxes which would have been levied on such company's operating property for 1933 except for the limitations of said chapter 191, Laws of 1933. (Assuming said occupation tax had been collectible for the whole of the year 1933).

Table D

Line No.	Item	N.P. (a)	G.N. (b)	O.W. (c)	Milwaukee (d)	Total
(1)	Total ad valorem taxes payable on said companies' operating property for 1932	$2,474,397	$1,556,512	$771,847	$825,895	$5,628,651
(2)	Percentage of said companies' operating properties' assessed valuation for 1933 of the same for the year 1932	95.666667%	95.006755%	90.782447%	89.102213%	93.85120%
(3)	Total ad valorem taxes payable on said companies' operating property for 1932 had such properties' assessed valuation been the same for 1932 as for 1933 (Line 2 x Line 1)	$2,367,173	$1,478,791	$700,702	$735,890	$5,282,556
[fol. 53]						
(4)	Maximum total ad valorem taxes which will be payable on said companies' operating property for the year 1933 under new tax plan	$2,011,875	$1,252,960	$609,924	$654,770	$4,529,529
(5)	Total amount of occupation tax payable by them had the same been imposed for the whole of the year 1933	90,000	46,500	11,250	19,350	167,100
(6)	Ad valorem taxes plus occupation taxes payable by said companies for 1933 (Line 5+Line 4)	2,101,875	$1,299,460	$621,174	$674,120	$4,696,599
(7)	Minimum net savings in total taxes ad valorem and occupation, which said companies will realize in 1933 by new tax plan (Line 3–Line 6)	265,298	179,331	79,528	61,770	$585,927
(8)	Ad valorem state taxes which would have been levied on said companies' operating property for 1933 under revenue laws in force prior to 1933 (unlimited mileage)	700,086	460,684	272,507	238,705	1,671,982
(9)	Ad valorem state taxes actually levied on said companies' operating property for 1933 under 40-mill tax limit act of 1933	321,992	211,884	125,335	109,788	768,999
(10)	Occupation tax (see line 5 above)	90,000	46,500	11,250	19,350	167,100

Table D—Continued

Line No.	Item	N.P. (a)	G.N. (b)	O.W. (c)	Milwaukee (d)	Total
(11)	Sum of said occupation taxes and said ad valorem state taxes levied on said companies' operating property for 1933 (Line 10 plus Line 9).....	$411,992	$258,384	$136,585	$129,138	$936,099
[fol. 54] (12)	Net savings in the total state taxes ad valorem and occupation, which said companies will realize as compared with ad valorem state taxes alone which would have been levied on their operating property under old law (Line 8–Line 11)...	$288,094	$202,300	$135,922	$109,567	$735,883

That the net railway operating income of railroad companies as computed by the Interstate Commerce Commission, and as adopted and acquiesced in and reported to the state regulatory body by all railroad companies operating in this state including plaintiff, is computed by deducting revenues from expenses, which revenues and expenses consist of the following items:

Said revenues are computed by adding the following items: Railway operating revenues; hire of freight cars, rent from locomotives, passenger-train cars; floating equipment; work equipment; and joint facility rent income;

Said expenses are computed by adding the following items: Railway operating expenses; railway tax accruals; uncollectible railway revenues; hire of freight cars; rent for locomotives, passenger train cars, floating equipment, and work equipment; and joint facility rents.

Replying to the allegations in defendant's answer that the apportionment to Washington of a mileage prorate of said defendant's revenues received on interstate shipments is the method usually and customarily followed in assigning revenues to the states and is as accurate as is possible in view of the inseparable nature of the business, and is in accordance with the method prescribed by the department of public works of the state, plaintiff avers that this method of apportionment is prescribed by said department of public [fol. 55] works only as a basis upon which railroad companies are to make reports to said department, and not for the purpose of determining the true amount of such interstate revenues which should properly be apportioned to Washington in a proceeding in which the true net earnings of defendant's operating properties in Washington are involved. That for the purpose of such a proceeding, the said department would be compelled to, and would, make an exhaustive study of defendant's interstate and intrastate traffic and expenses for the purpose of determining the true and equitable proportion of such interstate revenues and expenses which should properly be apportioned to Washington.

That the apportionment of revenues from interstate shipments to Washington on the basis of a mileage prorate does not apportion to defendant's Washington operating properties their fair and equitable proportion of such interstate revenues for the following, among other reasons:

That the operating properties of both the N. P., the G. N., the O-W., and the Milwaukee located in Washington constitute in each case the western terminal properties of transcontinental systems with their western termini at Puget Sound and other parts of the Pacific Coast, and their principal eastern termini are in the case of the O-W., at Omaha, Nebraska, in the case of the Milwaukee, at St. Paul and Minneapolis, Minnesota, Milwaukee, Wisconsin, and Chicago, Illinois, and in the case of the G. N. and N. P., at said St. Paul and Minneapolis, and via the lines of the Chicago, Burlington & Quincy Railroad Company (of which company said N. P. and G. N each own approximately one-half of the capital stock) Denver, Colorado, Kansas City, Missouri, St. Louis, Missouri, and Chicago, Illinois. That the principal western termini of said railroads are: As to the N. P., Spokane, Tacoma and Seattle, Washington and Portland, Oregon, as to the G. N., the same cities and in addition: Everett, and Bellingham, Washington; as to the O-W.: Seattle, Tacoma and Spokane, Washington, and Portland, Oregon; and as to the Milwaukee: Spokane, Seattle, Tacoma, Bellingham, and Grays [fol. 56] Harbor and Willapa Harbor points. That in terminal states such as Washington the expenses of each of said railroads are far greater per car mile, per ton mile and per passenger mile than in the intermediate or bridge states between their principal eastern and western termini by reason ~~of~~ the necessity in the state of Washington, of maintaining numerous branch lines where the density of traffic is comparatively light and of maintaining expensive terminal facilities in the large cities such as depots, docks, warehouses, industrial tracks, etc., for which branches and terminal facilities must be and are used by said companies for the assembling and distributing of long-haul traffic moving over said companies' transcontinental lines between their respective eastern and western termini. That by the apportionment of revenue from said companies' interstate shipments with exclusive reference to the relative miles of haul within and without the state, the contribution of the track mileage to the earnings of such revenue is alone considered and the important contribution of such terminal facilities to such earnings is wholly ignored and the contribution by the branch lines is largely ignored. That in recognition of the facts set forth in this paragraph

it is customary for the railroads in the western and other portions of the United States, in apportioning the revenues from interline shipments between companies with connecting lines, to apportion to the terminal lines far more than a mileage prorate of such revenues.

That for the reasons aforesaid, in computing the net earnings of defendant's Washington properties, defendant's railroad in Washington is entitled to a greater proportion of the revenues from interstate shipments than a relative mileage of haul prorate thereof.

In response to the allegations of said answer that the figures set forth therein as being the expenses within the state from both intrastate and interstate business, are those incurred in the state of Washington, which are wholly applicable to that state, plus a proportion of such expenses which cannot be localized, plaintiff avers that for the same reasons it is inequitable and unfair to Washington to ap- [fol. 57] portion to defendant's Washington operating property no more than a mileage prorate of the revenues from interstate business, it is likewise inequitable and unfair to apportion to such Washington properties all of those operating expenses which are incurred in such state, and for the further reason that Washington being a terminal state, all of the operating expenses incident to the assembling and distributing of long-haul traffic moving to or from Washington are incurred in that state and by defendant's method, are charged to defendant's operating property in said state, whereas such terminal expenses should rightfully and equitably be apportioned over the entire mileage which said traffic, both freight and passenger, is hauled. That in a terminal state such as Washington to and from which commodities and passengers are hauled in interstate commerce, the operating expenses per car mile, per ton mile and per passenger mile greatly exceed the operating expenses per car mile, per ton mile and per passenger mile in the intermediate states through which such traffic is hauled between the points of origin and destination, because of the operating expenses incident to loading and unloading, assembling the same into train loads, the maintenance of branch lines on which the traffic is comparatively light, and the maintenance and operation of expensive terminal facilities such as docks, wharves, warehouses, industrial tracks, depots, freight yards, etc., and

switching as to the carrier's own traffic. For that reason such terminal expense should be distributed evenly over the entire mileage of haul and not assigned alone to the state in which such expenses are incurred. But that in computing the operating expenses within the state of Washington as to interstate traffic as set forth in said complaint, defendant has assigned all of such terminal expenses to Washington. That such assignment, and the assignment to Washington of only a mileage prorate proportion of defendant's revenues from interstate traffic, for the reasons hereinabove set forth, makes the defendant's statements in its answer as to its revenues and expenses in the state of Washington for the years 1932 and 1933, and other [fol. 58] periods both false, misleading and valueless for any purpose.

In response to the allegations in defendant's answer that defendant's intrastate business is relatively short haul and local and is not less expensive in proportion to revenues than the interstate business affiant avers that such allegation is false and misleading in this: that the revenues received by defendant from its intrastate freight traffic per ton mile are, and were during the periods set forth in said complaint, far greater than those received by defendant on its interstate business, and, consequently, that the volume of freight handled per dollar of revenue received is far less as to such intrastate business than as to such interstate business.

Wherefore, plaintiff prays judgment against defendant as prayed in its complaint herein.

G. W. Hamilton, Attorney General; R. G. Sharpe, Assistant Attorney General, Attorneys for Plaintiff.

[fol. 59] *Duly sworn to by G. W. Hamilton. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 60] IN SUPERIOR COURT OF THURSTON COUNTY

[Title omitted]

INTERROGATORIES PROPOUNDED BY PLAINTIFF TO THE DEFENDANT—Filed Feb. 28, 1934

Comes now the plaintiff and propounds the following interrogatories to be answered under oath by the defendant:

(1) State whether or not your books of account showing your revenues and expenses incident to the various kinds of business carried on by you in the state of Washington since and prior to August 1st, 1934, are kept in accordance with the uniform system of accounting prescribed by the Interstate Commerce Commission.

(2) If your answer to Interrogatory No. (1) is "yes," state how long your books of account have been kept in accordance with such system.

(3) State whether or not, in reporting your revenues and expenses to the tax commission of the state of Washington and to the department of public works of the state of Washington for 1932 and prior years you reported such revenues and expenses in accordance with the uniform system of accounting prescribed by the Interstate Commerce Commission, and for what years your revenues and expenses were so reported to said commission and department, by such method of accounting.

(4) State the total amount of railway operating revenues, Account No. 501, received by you, or which have accrued, as a result of business transacted by you wholly within the state of Washington (a) during each of the months, August, 1933, to December, 1933, inclusive; and (b) from August 1st, 1933, to December 31st, 1933, in-
[fol. 61] clusive.

(5) State by the following accounts and account numbers (or by such accounts and account numbers as the same appear upon your books of account) the total amount of the railway operating revenues received by you, or which have accrued, as a result of business transacted by you wholly within the state of Washington (a) during each of the months, August, 1933, to December, 1933, inclusive;

and (b) from August 1st, 1933, to December 31st, 1933, inclusive:

Rail-line transportation revenue:

Account number	Name of account
101	Freight
102	Passenger
103	Excess baggage
104	Sleeping car
105	Parlor and chair car
106	Mail
107	Express
108	Other passenger-train
109	Milk
110	Switching
111	Special service train
112	Other freight-train
113	Water transfers—Freight
114	Water transfers—Passenger
115	Water transfers—Vehicles and live stock
116	Waters transfers—Other

Total Accts. 101–116.

Water-line transportation revenue:

Account number	Name of account
121	Freight

[fol. 62]

122	Passenger
123	Excess baggage
124	Other passenger service
125	Mail
126	Express
127	Special service
128	Other

Total Accts. 121–128.

Incidental operating revenues:

Account number	Name of account
131	Dining and buffet
132	Hotel and restaurant

Account number	Name of account
133	Station, train and boat privileges
134	Parcel room
135	Storage—Freight
136	Storage—Baggage
137	Demurrage
138	Telegraph and telephone
139	Grain elevator
140	Stockyard
141	Power
142	Rents of buildings and other property
143	Miscellaneous

Total Accts. 131–143.

Account number	Name of account
151	Joint facility—Cr.
152	Joint facility—Dr.

Total Accts. 151–152.

[fol. 63]. Total Railway operating revenue:

(6) State in what city and state your books of account showing the data requested in Interrogatories (4) and (5) are kept.

G. W. Hamilton, Attorney General; R. G. Sharpe, Assistant Attorney General, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 64] In Superior Court of Thurston County

[Title omitted]

Defendant's Answers to Interrogatories—Filed March 17, 1934

Comes now the defendant and makes the following answers to the interrogatories submitted in this cause February 28, 1934, to-wit:

(1) Yes.

(2) Since on or about July 1, 1914.

(3) In reporting revenues and expenses to the Tax Commission and Department of Public Works of the State of Washington the method prescribed by the Interstate Commerce Commission for making reports to it has been followed. The Interstate Commerce Commission has prescribed no rules or method for reporting to the State of Washington the revenues and expenses within that state.

(4) This question cannot be answered for the reason that accounts have not been kept in form necessary to make answer.

(5) The railway operating revenues received or accrued from business transacted wholly within the State of Washington during the month of August, 1933, to December, 1933, inclusive, by accounts stated in Interrogatory (5), so far as shown by the accounts kept by the Great Northern Railway Company are as follows:

August, 1933

Account number	Name of account	Amount
101	Freight	$269,455.17
102	Passenger	26,509.89
103	Excess baggage	194.83
104	Sleeping car	.....
105	Parlor and chair car	360.68
[fol. 65]		
106	Mail	.....
107	Express	.....
108	Other passenger train	130.61
109	Milk	1,076.74
110	Switching	3,739.91
111	Special service train	.....
112	Other freight train	.....
	Total	$301,467.83
131	Dining and buffet	2,721,37
132	Hotels and restaurants	1,362.87
133	Station, train and boat privileges	37.25

August, 1933 (Cont'd)

Account number	Name of account	Amount
134	Parcel room	291.15
135	Storage—Freight	201.66
136	Storage—Baggage	52.29
137	Demurrage	343.00
138	Telegraph and telephone	524.92
142	Rent of buildings and other property	4,991.55
143	Miscellaneous	5,381.12
151	Joint facility—Cr.	686.61
152	Joint facility—Dr.	3,820.02†
	Total	12,773.77
	*Grand total	$314,241.60

† Red in copy.

* Includes revenues received from U. S. Government and State of Washington.

September, 1933

Account number	Name of account	Amount
101	Freight	$264,034.13
102	Passenger	27,063.03
103	Excess baggage	277.10
104	Sleeping car	.....
105	Parlor and chair car	268.50
106	Mail	.....
107	Express	.....
108	Other passenger train	114.91
109	Milk	777.42
110	Switching	3,511.81
111	Special service train	.....
112	Other freight train	.....
	Total	$296,046.90
131	Dining and buffet	$2,432.83
132	Hotels and restaurants	1,465.35
133	Station, train and boat privileges	30.15

September, 1933 (Cont'd)

Account number	Name of account	Amount
134	Parcel room	318.25
135	Storage—Freight	333.42
136	Storage—Baggage	65.93
137	Demurrage	129.00
138	Telegraph and telephone	414.00
142	Rent of buildings and other property	6,047.65
[fol. 66]		
143	Miscellaneous	$5,703.05
151	Joint facility—Cr.	28.33
152	Joint facility—Dr.	1,185.59†
	Total	$15,782.37
	*Grand total	$311,829.27

† Red in copy.

* Includes revenues received from U. S. Government and State of Washington.

October, 1933

Account number	Name of account	Amount
101	Freight	$298,743.63
102	Passenger	23,016.41
103	Excess baggage	160.48
104	Sleeping car	.....
105	Parlor and chair car	265.45
106	Mail	.....
107	Express	.....
108	Other passenger train	105.39
109	Milk	813.08
110	Switching	5,868.34
111	Special service train	.....
112	Other freight train	.....
	Total	$328,972.78
131	Dining and buffet	$2,291.53
132	Hotels and restaurants	1,381.47
133	Station, train and boat privileges	31.06

October, 1933 (Cont'd)

Account number	Name of account	Amount
134	Parcel room	257.80
135	Storage—Freight	64.08
136	Storage—Baggage	49.54
137	Demurrage	240.00
138	Telegraph and telephone	440.90
142	Rent of buildings and other property	4,165.58
143	Miscellaneous	7,289.78
151	Joint facility—Cr.	107.32
152	Joint facility—Dr.	419.74†
	Total	$15,839.32
	*Grand total	$344,812.10

† Red in copy.

* Includes revenues received from U. S. Government and State of Washington.

[fol. 67]

November, 1933

Account number	Name of account	Amount
101	Freight	$257,344.55
102	Passenger	27,241.20
103	Excess baggage	165.74
104	Sleeping car	.....
105	Parlor and chair car	219.00
106	Mail	.....
107	Express	.....
108	Other passenger train	210.99
109	Milk	498.68
110	Switching	5,214.68
111	Special service train	.....
112	Other freight train	108.36
	Total	$291,003.20
131	Dining and buffet	$1,828.15
132	Hotels and restaurants	1,328.73
133	Station, train and boat privileges	16.56
134	Parcel room	190.70
135	Storage—Freight	233.83

November, 1933 (Cont'd)

Account number	Name of account	Amount
136	Storage—Baggage	41.06
137	Demurrage	559.00
138	Telegraph and telephone	349.23
142	Rent of buildings and other property	5,125.39
143	Miscellaneous	7,356.75
151	Joint Facility—Cr.	412.11
152	Joint facility—Dr.	.56†
	Total	$17,440.95
	*Grand total	$308,444.15

† Red in copy.

* Includes revenue received from U. S. Government and from State of Washington.

[fol. 68] December, 1933

Account number	Name of account	Amount
101	Freight	$168,788.99
102	Passenger	31,767.78
103	Excess Baggage	111.63
104	Sleeping car	.....
105	Parlor and chair car	313.35
106	Mail	.....
107	Express	.....
108	Other passenger train	174.24
109	Milk	6,869.45
110	Switching	2,823.96
111	Special service train	.....
112	Other freight train	.....
	Total	$210,849.40
131	Dining and buffet	$2,435.91
132	Hotels and restaurants	1,254.20
133	Station, train and boat privileges	37.00
134	Parcel room	225.10
135	Storage—Freight	28.92
136	Storage—Baggage	39.13

December, 1933 (Cont'd)

Account number	Name of account	Amount
137	Demurrage	93.00
138	Telegraph and telephone	463.77
142	Rent of buildings and other property	7,392.86
143	Miscellaneous	8,057.60
151	Joint facility—Cr.	3,756.48
152	Joint Facility—Dr.	7.57†
	Total	$23,776.40
	*Grand Total	$234,625.80

† Red in copy.

* Includes revenues from U. S. Government and from State of Washington.

[fol. 69] The following explanation is necessary with respect to certain of the above accounts:

132. Hotels and Restaurants: The amount shown in this account is for income received from the operation of station restaurants at which employees, the public and passengers are served.

133. Station, Train and Boat Privileges: This account includes revenues from weighing, vending and automatic machines and from advertising in stations and on trains, and includes the privilege of operating newspaper stands, selling papers and the amount received from telephone companies for the privilege of operating pay telephones in the depots. The details of the items in this account are not kept.

135 and 136. Storage of Freight and Baggage: This account represents amount collected from storage of freight and baggage, and it is not known whether the proceeds are collected from the storage of interstate or of intrastate business.

137. Demurrage: This account represents all demurrage paid in the state. No accounts are kept segregating the amount collected as between intrastate and interstate freight.

142. Rents of Buildings and Other Property: This account includes revenue received from other companies for

the exclusive use by them of certain operating properties owned by defendant.

143. Miscellaneous: This includes revenue from weighing cars for other companies and individuals, revenue from sale of cinders and other miscellaneous revenue.

151 and 152. Joint Facilities—Credit and Debit: These two accounts are applicable to operation of pool trains between Seattle and Portland. Some months defendant collects more than its proportion of the revenue and has to make payment to the other companies and, in other months, the other companies collect more than their proportion and have to make payment to defendant.

Edwin C. Matthias, Attorney for Defendant.

[fol. 70] *Duly sworn to by Geo. H. Hess, Jr. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 71] IN SUPERIOR COURT OF THURSTON COUNTY

[Title omitted]

DEFENDANT'S AMENDED ANSWERS TO INTERROGATORIES—Filed Aug. 10, 1934

Comes now the defendant and makes the following amended answers to the interrogatories submitted in this cause February 28, 1934, to-wit:

(1) Yes.

(2) Since on or about July 1, 1914.

(3) In reporting revenues and expenses to the Tax Commission and Department of Public Works of the State of Washington the method prescribed by the Interstate Commerce Commission for making reports to it has been followed for many years.

(4) This question cannot be answered for the reason that accounts have not been kept in form necessary to make answer.

(5) The railway operating revenues received or accrued from business transacted wholly within the State of Wash-

ington during the month of August, 1933 to December, 1933, inclusive, by accounts stated in interrogatory (5), as developed by a recheck of the accounts kept by the Great Northern Railway Company are as follows:

August, 1933

Account number	Name of account	Amount
101	Freight	$136,779.16
102	Passenger	26,188.61
103	Excess Baggage	172.61
104	Sleeping car	
105	Parlor and chair car	356.58
106	Mail	
107	Express	

[fol. 72]

108	Other passenger train	130.61
109	Milk	1,076.74
110	Switching	3,552.29
111	Special train service	
112	Other freight train	
	Total	$168,256.60

September, 1933

Account number	Name of account	Amount
101	Freight	$158,573.46
102	Passenger	26,644.50
103	Excess baggage	259.85
104	Sleeping car	
105	Parlor and chair car	262.20
106	Mail	
107	Express	
108	Other passenger train	114.91
109	Milk	777.42
110	Switching	2,993.73
111	Special service train	
112	Other freight train	
	Total	$189,626.07

October, 1933

Account number	Name of account	Amount
101	Freight	$167,738.40
102	Passenger	21,237.88
103	Excess baggage	150.22
104	Sleeping car	
105	Parlor and chair car	261.45
106	Mail	
107	Express	
108	Other passenger train	105.89
109	Milk	813.08
110	Switching	5,614.34
111	Special service train	
112	Other freight train	
	Total	$195,920.76

[fol. 73]

November, 1933

Account number	Name of account	Amount
101	Freight	$162,928.28
102	Passenger	25,506.58
103	Excess baggage	215.21
104	Sleeping car	
105	Parlor and chair car	215.40
106	Mail	
107	Express	
108	Other passenger train	210.99
109	Milk	498.68
110	Switching	5,040.59
111	Special service train	
112	Other freight train	
	Total	$194,615.73

December, 1933

Account number	Name of account	Amount
101	Freight	$82,020.24
102	Passenger	31,423.63
103	Excess baggage	140.06
104	Sleeping car	

December, 1933 (Cont'd)

Account number	Name of account	Amount
105	Parlor and chair car	311.75
106	Mail	
107	Express	
108	Other passenger train	174.24
109	Milk	487.20
110	Switching	2,913.54
111	Special service train	
112	Other freight train	
	Total	$117,470.66

The corrected figures are largely the result of an analysis and examination of Account 101 and the elimination of revenues received from interstate and foreign commerce and from transactions with the United States and the State of Washington. The revenues received and reported to the Interstate Commerce Commission under the other account numbers set forth in this interrogatory, but under which no revenue is shown in this answer, are unsegregated revenues received either partially or entirely from interstate commerce.

(6) The City of St. Paul in the State of Minnesota.

Edwin C. Matthias, Attorney for Defendant.

[fol. 74] *Duly sworn to by Geo. H. Hess, Jr. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 75] IN SUPERIOR COURT OF THURSTON COUNTY

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed April 1, 1935

This cause came on regularly for trial on the 22nd day of October, 1934, before the Honorable D. F. Wright, Judge of the above entitled court, trial by jury having been waived in the manner prescribed by the laws of the State of Washington. The plaintiff appeared by its Assistant Attorney

General, Mr. R. G. Sharpe, and the defendant appeared by its Attorneys, Mr. Thomas Balmer and Mr. Edwin C. Matthias. Evidence was introduced at length by both parties, and thereafter when both parties had rested the court took the case under advisement, and now, having duly considered all the evidence and the arguments and briefs of counsel, makes the following

Findings of Fact

I

This is an action by the State to recover from the Great Northern Railway Company a tax of 1½% of gross intrastate revenues imposed by Chapter 191, Section 2 (2) (e), Laws of 1933, for the months August to December, 1933, inclusive.

II

Defendant is a Minnesota corporation. It owns and operates a system of steam railway having its eastern termini at St. Paul and Duluth in the State of Minnesota, and Superior in the State of Wisconsin, and extending westerly from said termini through the States of Minnesota, North and South Dakota, Iowa, Montana, Idaho, Washington, [fol. 76] Oregon, California and the Dominion of Canada, with its western termini at Seattle and Tacoma in the State of Washington, Portland in the State of Oregon, Bieber in the State of California, and Vancouver in the Province of British Columbia, Dominion of Canada. Said line of railroad was constructed and equipped in the State of Washington more than thirty-five years ago, long prior to the enactment of Chapter 81, Laws of 1905, and Chapter 191, Laws of 1933, and is now and for more than thirty-five years last past has been a public utility devoted to and used for the transportation of passengers and freight, both intrastate and interstate, and for the transportation of the United States mails, and has been and is now an instrumentality of interstate commerce and of the commerce of the Government of the United States, subject to the Act of Congress approved February 4th, 1897, entitled "An Act to Regulate Commerce", and the acts amendatory thereof and supplemental thereto, including the Emergency Transportation Act of 1933, and also, in respect to intrastate transportation performed by it within the State of Washington, subject to the Constitution of said state and to the

"Public Service Commission Law" of said state, consisting of Chapter 117 of the Washington Session Laws of 1911 and the acts amendatory thereof and supplemental thereto. Long prior to the enactment of Chapter 191, Laws of 1933, defendant had expended and now has invested in its said railway line in the State of Washington more than one hundred million dollars, in order to provide adequate facilities for the transportation of both interstate and intrastate commerce and the commerce of the Government of the United States, including the United States mails.

III

Defendant's railroad system comprises approximately 10,541 miles of track, of which approximately 1,450 miles are and were in the State of Washington at the time said Chapter 191, Laws of 1933, became effective. Defendant's [fol. 77] railroad is taxed in the State of Washington under and by virtue of Chapter 130, Washington Special Session Laws of 1925, on its fair market value considered as a going concern, including all of its property, real, personal and mixed, and all of its rights and franchises of every kind and nature whatsoever. Ad valorem taxes have long been levied and paid thereon and for 1933 were $1,250,860.49. The tax of 1½% of gross revenue imposed by said Chapter 191, Laws of 1933, is not a property tax nor in lieu, either in whole or in part, of a property tax, nor is it a supervision tax, but it is an excise tax imposed on defendant solely for the privilege of doing a "steam railway business" in the State of Washington.

IV

Defendant's gross revenue from intrastate "steam railway business" (on which the tax of 1½% is computed) for August to December, 1933, and the amount of the tax, are as follows:

Month	Gross revenue	Tax
August	$168,256.60	$2,523.85
September	189,626.07	2,844.39
October	195,920.76	2,938.81
November	194,615.73	2,919.24
December	117,470.66	1,762.06
Total		$12,988.35

These are the amounts shown in defendant's amended answers to plaintiff's interrogatories.

It was stipulated in open court that if plaintiff be entitled to recover anything the judgment should be without prejudice to the right of either party to the adjustment and correction provided for by the Act. Subject to this stipulation the court finds that if plaintiff were entitled to recover anything in this cause, the amount would be the said sum of $12,988.35.

V

It has long been known and universally recognized that intrastate transportation in the State of Washington is much more expensive per unit of freight than interstate. [fol. 78] Some of the reasons are the much shorter average haul of the intrastate business, the lesser traffic density, especially on branch lines most largely used locally, much less tonnage per train, more frequent stops, double terminal expense, due to the fact that intrastate freight is both originated and terminated in the state, whereas interstate freight incurs at most but one of these handlings in the state. These and other peculiarities of intrastate business make it greatly more expensive per unit than interstate business. It is unnecessary to find the exact percentage of additional cost of intrastate business over interstate, but the court finds that such cost is greater in proportion to revenue than the cost of the interstate.

VI

Defendant as a carrier subject to the Acts of Congress regulating interstate commerce keeps its system accounts as required by the Interstate Commerce Commission, but these accounts do not segregate or show the results of operations in individual states, nor do they divide revenues and expenses between interstate and intrastate business. Defendant also files annual reports with the Department of Public Works of Washington, showing certain statistics of its operations within the state, but such reports do not segregate interstate from intrastate expenses, and while they purport to segregate interstate from intrastate revenues, the court finds that such segregation has never been accurately made, for the reason that it was never a matter of importance either to the state or to the Railway Company prior to the imposition of the state occupational tax. For

these reasons and because no accounts are kept currently of the expenses of intrastate business separately from interstate business within the State of Washintgon, a special study was required to determine the financial result of operating the defendant's railway line in intrastate commerce in the State of Washington for the year 1933. This study was made by defendant's witness, W. M. Burn, a railroad statistician and accountant of ability and experi- [fol. 79] ence. No original study of the subject was made by or in behalf of the plaintiff, but its witness, C. A. Manschreck, Statistician for the State Tax Commission, undertook to point out certain alleged errors in Mr. Burn's study and to restate the defendant's exhibit based upon his (Mr. Manschreck's) correction of these alleged errors. Based upon the evidence of Mr. Burn and Mr. Manschreck and the other evidence in the record, the court finds that the operating revenues, operating expenses, net railway operating deficit and other results of the defendant's intrastate operations in Washington for the year 1933, are as follows:

Great Northern Railway Company—Washington—
Calendar Year 1933

Intrastate Operations

1. Gross Operating Revenues	$2,179,760
2. Operating Expenses	1,730,361
3. Net Revenue from Railway Operations	449,399
4. Railway Tax Accruals	335,247
5. Railway Operating Income	114,152
6. Equipment Rents—Net Debit	19,966
7. Joint Facility Rent—Net Debit	193,455
8. Total Rentals—Net Debit	213,421
9. Net Railway Operating Deficit	99,269
10. Cost of Reproduction New, Less Depreciation, as of I. C. C. Valuation Date (June 30, 1915) plus Additions and Betterments to December 31, 1933, of Railway Property and Equipment in Washington—Intrastate Proportion	29,733,312
11. Annual Rate of Return Earned on above Reproduction Cost	Deficit
12. Interest on above Reproduction Cost at 5.75% per annum	1,709,665
13. Amount short of Earning a Return of 5.75% per Annum	1,808,934

VII

Gross operating revenues shown in the foregoing finding (No. VI) are those actually earned by the defendant in intrastate commerce during the year 1933. The operating expenses and other charges shown are those actually incurred by the defendant in such commerce during the year 1933, as nearly as such expenses and other charges can be determined, and the court finds that they are substantially correct as shown. These expenses and other charges rep- [fol. 80] resent the direct cost incurred by the defendant in intrastate commerce in the state during the year 1933 plus an apportionment of certain expenses and charges commonly incurred in both interstate and intrastate commerce within the state, which apportionment has been made on the basis of various use units. The use units so employed the court finds are in all cases suitable and comparable for the purpose of obtaining a reasonable division of expenses and charges with respect to property used in common. In further explanation of Finding No. VI the court finds and states that the results there shown were reached by the following methods:

(a) Terminal Costs.—The expense of switching in terminal and freight division points was ascertained by a special study made in a test week. The week used was that ending June 15th, 1934, after determining that that period was fair to the State and representative of conditions during the year 1933. The test week was, in fact, too favorable to plaintiff, in that the volume of traffic moving during that week was greater than that moving during an average week of 1933, being approximately 1/49th, instead of 1/52nd of the year's traffic, resulting in a lower cost per unit of traffic than the average of 1933, and therefore resulting, when applied to defendant's intrastate freight business for the entire year, in understating the cost. This study of terminal expense was made by an accepted and widely used method known as the "Toverston-Sauer Formula". This formula has often been used in important cases before the Interstate Commerce Commission and has the approval of that body. It has been used and accepted in a number of court cases in this state. The basis is the engine-hour cost of switching in the several classes of switching work, as, for example, breaking up and assembling cars into trains,

moving cars between breakup yards and industrial tracks, etc. The total cost of the work includes wages, supplies, maintenance of tracks and locomotives, and all applicable costs ascertained in detail and segregated by appropriate [fol. 81] account numbers in accordance with the uniform system of accounts prescribed by the Interstate Commerce Commission. The details are too voluminous to be set out in these findings, but they are fully described in the testimony and explained in Great Northern Exhibit 11, pages 16 to 27, inclusive.

(b) Road Haul Costs.—A special study was made of each train run on the defendant's line in the state during the test week ending November 21st, 1933, which was fairly representative of conditions during the entire year. This study was made to ascertain the car-miles, gross and net ton-miles and kind of freight, whether intrastate or interstate. The direct operating expense for wages, fuel, water and lubricants of the various trains during this period was ascertained. Indirect expenses, such as maintenance of way and structures, and maintenance of equipment, were applied to the intrastate business in proportion to the use made of the property by that business, different appropriate use units being used for the various services. The details are shown on pages 12 and 13 of Exhibit 11.

(c) Capital Charges.—The cost of reproduction new, less depreciation, of the defendant's railroad property in the state as of the Interstate Commerce Commission valuation date (June 30th, 1915), plus additions and betterments to December 31st, 1933, is $122,038,008. Of this the court finds that $29,733,312 is applicable to the defendant's intrastate traffic. This figure was obtained by finding the relationship of intrastate operating expenses to total operating expenses in the state for the year 1933, and represents as nearly as may be found the value of the defendant's property devoted to intrastate commerce in the State of Washington at the time of the hearing of this cause.

(d) Joint Facility Rents.—The defendant incurred a net debit of $794,018 for joint facility rents in the State of Washington in the year 1933. This expense the court finds [fol. 82] is assignable to the defendant's intrastate business upon the basis of the relationship of intrastate operating

expenses to total operating expenses within the state for the year 1933. The plaintiff's witness criticized this allocation, upon the ground that the major part of the defendant's joint facility rental is paid for the joint use of the Northern Pacific Railway Company's railway line between Seattle and Vancouver, Washington, and that because the ratio of interstate to intrastate car-miles of the defendant on this line is higher than the ratio of defendant's interstate operating expenses to intrastate operating expenses in the state, the joint facility rentals incurred on this line should have been divided between the defendant's interstate and intrastate business on the basis of the car-miles made in the two classes of service on the line. No effort was made by the plaintiff to localize any other line of the defendant in the state, either as to joint facility rentals, operating expenses or charges of any kind. On the contrary, state-wide averages were used by the plaintiff's witness in the computation of all other costs. The court finds that for the purpose of properly allocating joint facility rentals the defendant's property in the state must be treated as a whole, because the traffic contributed by the Seattle-Portland line to the defendant's other lines in the state increases the volume of its business more than it increases the expense of handling, and thus operates to reduce the unit cost of its entire operations throughout the state. In addition the court finds that the defendant has several lines in the state on which low-grade intrastate traffic predominates, and that if the expense of operating such lines were assigned to intrastate business on a car-mile basis the total expense assigned to the defendant's intrastate traffic would be greater than the amount assigned thereto by the court's finding No. VI.

The court further finds that by having joint use of said Seattle-Portland line through the payment of said joint facility rentals the defendant is enabled to secure additional [fol. 83] traffic for its lines in the state as a whole and thus to reduce its cost of operation per unit of traffic below the cost that would be incurred in the absence of said joint arrangement.

(e) Taxes.—Ad valorem taxes paid by the defendant on its property in Washington for the year 1933, after deducting a small amount charged to other railway tenants of its property, were $1,238,385. The Federal taxes charge-

able to Washington on the basis of the relation of Washington operating revenue to system operating revenue for the year 1933 amounted to $9,593, making total state and Federal taxes chargeable to the state of $1,247,978. This amounts to 15.38% of the defendant's gross operating revenues—intrastate and interstate—earned in the State of Washington in the year 1933. The court further finds that this amount should be charged to the intrastate and interstate business, respectively, upon the basis of the gross revenues earned in the two classes of service in the state, and that the sum of $335,247 should thus be charged for state and Federal taxes to the defendant's intrastate business in the year 1933.

Apportionment of taxes to intrastate business on the relation of gross interstate and intrastate revenue is a generally used basis, has been used in rate litigation heretofore occurring in this state, and is correct. The alternative method suggested by plaintiff, namely, the relation of freight car-miles plus passenger car-miles—intrastate to interstate—is without precedent, and is incorrect. It attempts to make a common denominator of the freight car-mile and the passenger car-mile, which are two entirely different things. The plaintiff further criticizes the gross revenue basis of apportionment, upon the ground that it assigns to the State of Washington only a mileage proportion of interstate revenues and that because Washington is a terminal state it is entitled to more than a mileage prorate of interstate revenues. Increasing the assignment of [fol. 84] interstate revenue to the state proportionately reduces the assignment of taxes to the intrastate business.

The court finds, however, that the mileage prorate method is correct, for the following reasons:

(1) It is the method long prescribed by the Department of Public Works of Washington for railroad reports to that Department.

(2) It is the method used in reporting to the Railroad Commissions of all other states through which the defendant operates.

(3) While other methods have been suggested, none has ever been agreed upon, and the Interstate Commerce Com-

mission, after holding extended hearings on the subject, failed to make any decision.

(4) Any different method would have to be agreed upon by all the states and the Interstate Commerce Commission, and no such agreement is obtainable, as demonstrated by the proceedings before the Interstate Commerce Commission in the case just mentioned.

(5) On the defendant's line the interstate bridge traffic—meaning traffic that neither originates nor terminates in Washington, but moves through the state—is practically equal to the interstate traffic that originates or terminates in the state. In 1933 the total amount of bridge traffic handled by the Great Northern in the State of Washington amounted to 927,498 tons, which was almost equal to the total interstate traffic originated or terminated in the state, 1,069,903 tons. Thus, as against every ton which incurs a terminal handling in Washington, there is practically a corresponding ton whose terminal handling is entirely in other states. The average interstate shipment handled over the defendant's line in Washington is thus found to incur substantially one-half of one terminal handling in the state, as compared to two terminal handlings incurred by each intrastate shipment—a ratio of one to four. The assignment of interstate revenues to Washington upon a mileage basis gives Washington credit for all the revenue covering terminal costs to which the state is entitled and is fair to the intrastate traffic.

[fol. 85] (6) One of the reasons advanced by the plaintiff for augmenting Washington mileage proportion of interstate revenues is the contention that expense disproportionate to mileage is incurred at the terminals in Washington. It is true that the operation of terminals is expensive, but the court also finds that operating expense disproportionate to mileage is incurred in other states. Examples of this are (a) operation through the Rocky Mountains in Montana, while the difficulties of mountain operation in Washington have been very much reduced by the Cascade Tunnel, which very much lessens operating expenses; (b) the reduction of both mechanical and personal efficiency by extremely cold weather on the central and eastern part of the defendant's line, a condition which does not exist in Wash-

ington; (c) the necessity of using treated water for locomotives on the plains, no similar expense being required in Washington.

(7) The defendant's large Washington terminals are at Seattle, Tacoma and Spokane. Its large eastern terminals are at the Twin Cities in Minnesota, and at the head of the Great Lakes. The valuation placed by the Interstate Commerce Commission upon said western terminals is but 42.86% of the valuation found for its said eastern terminals, and the mileage of tracks in its said western terminals is but 30.20% of the mileage of tracks in its said eastern terminals. Therefore, if it be assumed that operating expense is increased in proportion to the extent and value of terminals and that revenues should be allocated to states in the same proportion, there would be more revenue assigned from Washington to Minnesota than there would be to assign from Minnesota to Washington on a car moving from Washington to Minnesota, or vice versa.

All things considered, the court finds that if the mileage proration method were to be modified on the theory that Washington is a terminal state, it would be necessary to apportion as much interstate revenue from other states to Washington as would be apportioned from Washington to other states. The court therefore finds that the mileage [fol. 86] prorate method of assigning interstate revenues to Washington is correct and fair to the intrastate traffic.

(f) Equipment Rentals.—Equipment rentals applicable to Washington intrastate traffic were determined upon the relation of intrastate car-miles to total car-miles in the state during 1933 in the passenger and freight services, respectively. The evidence shows that the assignment is in substantial accordance with the actual use in the state of the equipment on which the expense was incurred.

[fol. 87] (g) Intrastate Gross Operating Revenues, Freight and Passenger.—Defendant's total intrastate gross operating revenues in Washington for the year 1933 were as follows:

Account	Freight	Passenger	Total
(101) Freight	$1,502,153	.....	$1,502,153
(102) Passenger	.....	$306,621	306,621
(103) Excess Baggage	.....	2,163	2,163
(105) Parlor and Chair Car	.....	3,292	3,292
(106) Mail	.....	131,721	131,721
(107) Express	.....	36,780	36,780
(108) Other Passenger Train	.....	1,746	1,746
(109) Milk	.....	12,495	12,495
(110) Switching	38,367	.....	38,367
(111) Special Service Train	14	.....	14
(112) Other Freight Train	434	.....	434
(131) Dining and Buffet	.....	26,971	26,971
(132) Hotel and Restaurant	.....	15,654	15,654
(133) Station, Train and Boat Privileges	.....	318	318
(134) Parcel Room	.....	2,611	3,611
(135) Storage—Freight	2,010	.....	2,010
(136) Storage—Baggage	.....	494	494
(137) Demurrage	1,016	.....	1,016
(138) Telegraph and Telephone	3,653	1,279	4,932
(142) Rents of Buildings and other property	46,570	16,312	62,882
(143) Miscellaneous	28,427	9,957	38,384
(151)			
(152) Joint Facility—Net Debit	.....	(11,298)	(11,298)
Total	$1,622,644	$557,116	$2,179,760

(h) Intrastate Passenger Expense.—Total passenger operating expenses applicable to Washington intrastate traffic in the year 1933 were $897,458, determined in the following manner: First, in dividing expenses between the freight and passenger business, those expenses incurred separately in the two services are assigned separately to them; second, common expenses are divided between the freight and passenger services on the relation of the cost of fuel consumed in the two services, respectively. This is the method prescribed by the Interstate Commerce Commission and long prescribed by the Department of Public Works of Washington. Third, total passenger expense is divided between the interstate and the intrastate passenger business in proportion to the revenues earned in the two classes of service. The court finds that this was a correct [fol. 88] method of determining the expense of the intrastate passenger service on the defendant's line.

(i) Period Used in Determining Certain Expenses.—In figuring expense of maintenance of way and freight car repairs the preceding findings of the court are based upon the average cost for three years, rather than upon costs incurred in the year 1933. The method used is correct, for the following reasons: Maintenance is not an evenly recur-

ring annual item. It is in part due to use, but in greater part due to wear and wastage of the property. The necessity for maintenance accrues regardless of whether money is available to provide it. For this reason the maintenance expense actually incurred in any given year is unlikely to be representative of the normal. It is customary in railroad accounting to use a longer period than one year, either five years or three years, in computing normal maintenance. The court finds that the three years' maintenance figures used are correct. Plaintiff's witness offered an exhibit in which maintenance was figured on the basis of but one year, namely, the year 1933. This witness did not state that one year was a proper period for computing maintenance. The court finds that it is too short and cannot be used.

(j) Pensions.—Plaintiff criticizes the inclusion of a relatively small item for pensions in the operating expenses assigned by defendant to its Washington intrastate traffic. The court finds that these pensions were paid to superannuated employes of the defendant and were in the nature of deferred compensation for services performed during their active years and that the payment of these pensions was made by the defendant's management in the exercise of proper discretion and business judgment and that they were properly chargeable to operating expenses.

(k) Other Details of Cost Study.—The court finds that in addition to the details herein noticed the defendant's [fol. 89] Exhibit 11, introduced by its witness Burn, and the methods therein used, are substantially correct and follow approved methods of accounting and shows the results of its intrastate operations in the State of Washington during the year 1933 with substantial accuracy. The court further finds that financial results of operation of defendant's railway system and of the portion thereof within the State of Washington for years prior to the year 1933, because of difference in revenues and operating costs and for other reasons, are not representative of financial results of operation for the year 1933 and at the date of the trial of this cause.

VIII

The court finds and concludes that defendant's local or intrastate business as a steam railway company in the State

of Washington is conducted at a loss and was conducted at a loss during the entire year 1933, and that the tax imposed [fol. 90] by Chapter 191, Laws of 1933, if paid, will have to be paid out of defendant's earnings from interstate and foreign commerce and from the income of its property located outside the State of Washington.

IX

By Chapter 117, Washington Session Laws of 1911, there was created an administrative tribunal called the Public Service Commission (later called the Department of Public Works and now called the Department of Public Service), with the usual powers of regulation and supervision of public utilities, including common carriers by railroad, and the powers and duties of the Railroad Commission, which was created by Chapter 81, Washington Session Laws of 1905, were transferred to said Public Service Commission. Defendant's investment in its line of railway was made to provide adequate facilities for the handling of both interstate and intrastate commerce and a substantial part thereof was made by order of the Railroad Commission of Washington and its successors, the Public Service Commission and the Department of Public Works, for the purpose of equipping the defendant's property to comply with said Public Service Commission law and the acts amendatory thereof and the orders made pursuant thereto.

Said Railroad Commission and Public Service Commission, and their successors, were established and have been maintained pursuant to Article XII, Section 18, of the Constitution of the State of Washington, providing that "A railroad and transportation commission may be established, and its powers and duties fully defined by law." It is also provided by the Constitution of the State of Washington (Article XII, Section 15) as follows:

"15. Prohibition Against Discriminating Charges.—No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this state, or coming from or going to any other state. Persons and property transported over any railroad, or by any other transportation company, or indi-

[fol. 91] vidual, shall be delivered at any station, landing, or port at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates."

By the provisions of the Constitution of the State of Washington and said statutes there is imposed upon the defendant an ineluctable obligation to devote its property to the service of the people of the State of Washington in intrastate transportation, from which it cannot withdraw and at the same time continue to carry on its business as a common carrier in interstate commerce, and therefore any tax imposed upon the defendant by said Chapter 191, Laws of 1933, would, and does constitute a burden upon and an attempt to regulate interstate commerce, in violation of Article I, Sections 8 to 10, and Article VI of the Constitution of the United States, and of the Acts of Congress regulating interstate commerce, particularly Section 1 (18) (21), Section 13, Section 15A and Section 19A thereof, and of the Emergency Railway Transportation Act of 1933.

X

The court finds that suit involving the issues of this case was originally filed by the defendant in the District Court of the United States, for the Western District of Washington, to enjoin the collection of the occupation tax herein sued for by the plaintiff. The plaintiff herein obtained a stay of proceedings in said Federal Court suit by filing this action in the state court. After said Federal Court suit was filed Senate Bill No. 18 was introduced at the special session of the 1933 Legislature of the State of Washington, and copy of said Senate Bill No. 18, marked Exhibit "B", is attached to the defendant's answer on file herein and hereby made a part of these findings. This bill was prepared and its enactment was urged by attorneys for the State of Washington and by a member of the Tax Commission of the State of Washington, for the stated purpose of defeating defendant's contention in this case, [fol. 92] that it is obligated by the laws of the State of Washington to do intrastate business and cannot withdraw therefrom. Said bill failed to pass.

XI

The court finds that defendant's interstate and intrastate business in the State of Washington is inseparably commingled and mutually dependent. For one of the test periods used in the cost studies—the seven days ending November 21st, 1933, intrastate revenue net ton-miles were 4,155,692, or 32.35%, and interstate revenue net ton-miles were 8,691,505, or 67.65%. For the month of November, 1933, intrastate revenue net ton-miles were 14,547,465, or 24.80%, and interstate revenue net ton-miles were 44,121,835, or 75.20%. For the entire year 1933 intrastate revenue net ton-miles were 138,265,617, or 23.10%, and interstate revenue net ton-miles were 460,335,442, or 76.90%.

Both interstate and intrastate business, eastbound and westbound, were largely transported by defendant over the same lines of railroad, in the same trains, by means of the same employes, and with the same facilities. It is not possible, practically and economically, or at all, to carry intrastate freight separately from interstate freight by different lines of railroad in different trains or by means of different facilities and employes.

During the year 1933 defendant's gross passenger operating revenues in the State of Washington amounted to $1,540,264, of which $551,845 was from intrastate business. Most of defendant's passengers were carried on interstate through trains, east and westbound and north and southbound. Passengers carried on local trains operating in local service are relatively few and those trains also carry some interstate passengers. The court finds that it is not possible to carry said intrastate and interstate passengers on separate lines of railroad or by separate trains, economically and efficiently, or at all, and defendant's intrastate and interstate passenger traffic is inseparably commingled with and mutually dependent to the same extent [fol. 93] and in the same manner as the freight traffic.

XII

If defendant could and should abandon its intrastate freight business, it could and would somewhat reduce its train service and its car mileage, and save some direct expense applicable to its Washington freight business, but it would thereby lose its entire gross revenue from intrastate freight business of $1,622,644. These figures are based

upon operations for the year 1933, the latest available at the time of the trial of this cause. Also some reduction in pasenger train service could be effected if intrastate passenger business were to be discontinued, which would result in a further saving in direct expense, but the result would be the loss by defendant of its entire gross revenue from the intrastate passenger business, which for the year 1933 amounted to $557,116. The net result of abandonment by defendant of its intrastate passenger and freight business in order to escape the tax imposed by said Chapter 191, Laws of 1933, would be the loss of $2,179,760, and the saving of not more than 14% of that amount.

Therefore, if defendant could and should abandon its intrastate freight and passenger business, the entire burden of maintaining and operating its interstate system of railroad in Washington, constructed and equipped to handle both interstate and local commerce, would fall entirely on interstate commerce and would necessitate an increase of rates and fares greater than the same could bear as a practical matter, or at all, and would result in the destruction of an essential instrument of interstate commerce and of the transportation of the mails, troops and munitions of the United States, and of the value of its property in the State of Washington to the amount of more than one hundred million dollars.

XIII

Defendant's railroad is well located and economically managed. It serves the principal cities and towns of the [fol. 94] State of Washington. The operation of its railroad in local business is essential to the people of the State of Washington and of the United States. Most of defendant's local rates cannot be raised, because of competition from other kinds of transportation. Under the law such rates cannot be raised without the consent of the Department of Public Works. Defendant has heretofore applied for an increase of certain local rates and said application was denied by the Department of Public Works, as appears from a copy of its order, marked Exhibit "A", attached to the defendant's supplemental answer herein and hereby made a part of these findings. The court further finds that defendant as a practical matter has been unable to increase its revenues from local business and

further fiinds that whether it can do so in the future is a matter attended with great uncertainty and could be accomplished only after long and expensive litigation, and such increases, if obtained, would have no bearing upon defendant's income in the year 1933, or for many years subsequent thereto. There is at this time an application before the Interstate Commerce Commission known as Ex Parte 115, for increased rates, and a similar application before the Department of Public Works. No decision has been made and it is not known what increases, if any, will be allowed by said Commission nor what the attitude of the Department will be in the similar state case pending before it. The court finds that defendant has done all it can do to increase its revenue, but is unable to do so.

Pursuant to the foregoing findings of fact, the court makes the following

Conclusions of Law

I

The tax imposed by Chapter 191, Laws of 1933, is an excise or occupational tax, as distinguished from a property or other kind of tax. It is imposed for the "privilege of [fol. 95] engaging in business activities". As applied to defendant a tax of 1½% is imposed for the privilege of engaged in the business of a "steam railway". In view of the language found in Section 5 the prescribed percentage of gross income must be computed only upon the gross income received from intrastate "steam railway business". But, although this is the measure of the tax, the privilege or occupation upon which the tax is laid is that of engaging in railroad business, which includes the transaction of both intrastate and interstate business. The penalty for failure to pay is liability to injunction proceedings and seizure and sale of the physical property of the railway, which would make it impossible to engage in either intrastate or interstate commerce. Income from other business activities in which defendant may be engaged are taxable, if taxable at all, at other rates. This case is not concerned with them.

II

A state may require payment of an occupation tax from one engaged in both intrastate and interstate commerce.

But a state cannot tax interstate commerce or the privilege of engaging in it. Where conditions are prescribed and license required and a tax is imposed on one engaged in both interstate and intrastate commerce, certain conditions must be met. One is that the party taxed must be free in law and in fact to withdraw from its intrastate business, while continuing to transact its interstate business free of the tax. Chapter 191, Laws of 1933, does not meet this condition.

III

Defendant was not, and is not free, under the Constitution and laws of this state to withdraw from its intrastate business while continuing to transact its interstate and foreign business. It performs an indispensable service for the people of the State of Washington, from which it cannot withdraw. Its continued performance of this service is compellable at the suit of the state and of the citizens of the state having an interest in such performance.

[fol. 96]

IV

Defendant is an interstate carrier by railroad subject to the Acts of Congress regulating interstate commerce. Under several provisions of the Interstate Commerce Act, especially Section 1 (18) to (21) defendant is not permitted to abandon its lines in this state, or any of them, or the operation of said lines, or any of them, in either interstate or intrastate business, unless it shall first have obtained a certificate from the Interstate Commerce Commission that the present or future public convenience and necessity permit of such abandonment. Obtaining such a certificate is a precedent and indispensable condition of the right of abandonment of operation of any line or part of line of a carrier subject to the Acts of Congress. The prohibition applies to the strictly intrastate business of an interstate carrier by railroad and to every part of its line operated in connection with or as a part of its interstate system. The Interstate Commerce Act, as well by Sections 13 (4), 15A, 19A and others, as by Section 1 (18) to (21), has forceful application and is an inseparable obstacle to abandonment by the defendant of intrastate business while attempting to continue to transact interstate and foreign business.

V

Nor can defendant, as a matter of fact, or as a practical matter, withdraw from its intrastate business while continuing to transact its interstate and foreign business. Defendant's railroad was constructed to handle both classes of business. To abandon its intrastate business would throw the entire burden of operating and maintaining the interstate system on interstate commerce and would create operating losses greater than such interstate commerce could bear. Defendant's interstate business would necessarily be destroyed and its property would be confiscated.

[fol. 97]

VI

The court concludes, therefore, that Chapter 191, Laws of 1933, in its requirement of a license (section 3), the making of reports (Section 6) and the payment of a tax of 1½% of gross income from intrastate railway business as a condition of the right to engage in steam railway business, violates Article I, Section 8, and the Fourteenth Amendment to the Constitution of the United States, and as well Sections 1 (18) to (21), 13 (4), 15A and 19A of the Interstate Commerce Act, and the Emergency Transportation Act of 1933, and is void as applied to defendant.

VII

The court further finds that the tax imposed by said Chapter 191, Laws of 1933, on the pretext of a tax or fee for the privilege of doing local business in Washington, is in reality a tax and burden upon interstate commerce, and upon the gross revenues received by defendant therefrom, in that said tax, if paid, would have to be paid out of the earnings of defendant from its interstate business, and is a tax upon its business done and upon income earned in other states, and upon property of the defendant located outside the State of Washington, which tax it cannot avoid by withdrawing its property from use in local commerce within the State of Washington, either under said Public Service Commission law of the State of Washington, and the amendments thereof, under the Constitution of the State of Washington, under the acts of Congress regulating interstate commerce, or as a practical matter, or at all, and said tax is in violation of the Constitution of the

United States, in that it imposes a burden upon, and interferes with the exercise of governmental powers of the Federal Government, towit, the transportation of the United States mails, troops, and munitions of the United States, and is in violation of Article I, Sections 8 and 10, and Article VI, also the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and of the acts of Congress regulating [fol. 98] interstate commerce, particularly Section 1 (18) (21), Section 13, Section 15A and Section 19A thereof, and of the Emergency Railway Transportation Act of 1933, approved June 16, 1933.

VIII

Let judgment be entered dismissing plaintiff's action with prejudice and costs to defendant.

Done in open court this 1st day of April, 1935.

D. F. Wright, Judge.

I acknowledge due service of a copy of the foregoing proposed Findings of Fact and Conclusions of Law this 28th day of March, 1935.

G. W. Hamilton & R. G. Sharpe, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 99] In Superior Court of Thurston County

No. 15417

State of Washington, Plaintiff,

vs.

Great Northern Railway Company, a Corporation, Defendant

Judgment—Filed April 1, 1935

This cause came on regularly for trial on the 22nd day of October, 1934, before the Honorable D. F. Wright, Judge of the above entitled court, trial by jury having been waived in the manner prescribed by the laws of the State of Wash-

ington. Plaintiff appeared by its Assistant Attorney General, Mr. R. G. Sharpe, and the defendant appeared by its Attorneys, Mr. Thomas Balmer and Mr. Edwin C. Matthias. Evidence was introduced at length by both parties, and thereafter when both parties had rested the court took the case under advisement and subsequently made and entered its Findings of Fact and Conclusions of Law, directing the entry of judgment in favor of the defendant.

It is now therefore ordered, adjudged and decreed that the plaintiff take nothing by this action against the defendant, that said action be, and it is hereby dismissed with prejudice to the maintenance of any other action upon or on account of the subject matter of this action, and that the defendant recover from the plaintiff its costs and disbursements herein.

Done in open court this 1st day of April, 1935.

D. F. Wright, Judge.

[File endorsement omitted.]

[fol. 100] In Superior Court of Thurston County

[Title omitted]

Notice of Appeal—April 1, 1935

This matter came on for hearing on signing of findings of fact, conclusions of law and judgment. R. H. Sharpe appeared for the State of Washington and Thomas Balmer appeared for the Deefendant. The findings of fact, conclusions of law and judgment presented by Mr. Balmer were signed by the Court. Mr. Sharpe, on behalf of the plaintiff, then made the following notice of appeal in open court:

"At this time, the plaintiff, State of Washington in the case of State of Washington vs. Great Northern Railway Company, Number 15417, gives notice of appeal that it appeals to the Supreme Court of the State of Washington from the judgment entered by the Court and from the whole thereof."

[fol. 101] IN SUPREME COURT OF WASHINGTON

No. 25,683

STATE OF WASHINGTON, Plaintiff and Appellant,

v.

GREAT NORTHERN RAILWAY COMPANY, a Corporation, Defendant and Respondent

No. 25,684

STATE OF WASHINGTON, Plaintiff and Appellant,

v.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Defendant and Respondent

Appeals from the Superior Court for Thurston County

Hon. D. F. Wright, Judge

Brief of Appellant

ASSIGNMENTS OF ERROR IN APPELLANT'S BRIEF IN WASHINGTON SUPREME COURT—Filed May 24, 1935

Abbreviations:

For convenience and brevity, the defendant, Great Northern Railway Company, will be herein referred to as the "G. N."

Assignments of Error

Great Northern Case:

(G. N. 1) The court ererd in finding that under the State statutes and constitution, the G. N. is not permitted to renounce its local business in Washington without also withdrawing from its interstate business conducted therein. (Finding IX, G. N. Ab. 256-7; Conclusions 2 and 3, G. N. Ab. 261-2.)

(G. N. 2) The court erred in concluding that under Chapter 191, Laws of 1933, the G. N.'s right to conduct its in-

[fol. 102] terstate business is conditioned upon the payment of the Occupational Tax. (Conclusion "1", G. N. Ab. 260-1.)

(G. N. 3) The court erred in finding that it is not possible for the G. N. to carry its intrastate freight and passengers and interstate freight and passengers in different trains or by means of different facilities and employes. (Finding XI, G. N. Ab. 257-8.)

(G. N. 4) The court erred in finding that the making of accurate reports to the D. P. W. of the G. N.'s intrastate revenues was never a matter of importance prior to the imposition of the Occupational Tax Act of 1933. (Finding VI, G. N. Ab. 245.)

(G. N. 5) The court erred in finding that the G. N. has never accurately reported its intrastate revenues to the D. P. W. (Finding VI, G. N. Ab. 244-5.)

(G. N. 6) The court erred in permitting various of the G. N.'s witnesses to testify over plaintiff's objection that the same was hearsay and not the best evidence, that certain railway operating revenues for 1933 entered in the G. N.'s books of account and reported under oath to the D. P. W. as revenues from intrastate business, were in fact revenues from interstate business, and in refusing to strike such testimony after the same was so received. (G. N. Ab. 120-124; 129-142.)

(G. N. 7) The court erred in refusing to strike pages "A" to "F" of G. N.'s Exhibit "11," on the ground that the same was hearsay and based on records available but neither produced nor offered in evidence. (G. N. Ab. 208-9.)

(G. N. 8) The court ererd in finding with respect to the G. N.'s 1933 intrastate operating revenues,—

(G. N. 8-2) That the total thereof was only $2,179,760, or any sum less than $3,305,548 as reported under oath to the D. P. W. (G. N. Ab. 164);

(G. N. 8-b) That the amount of such revenues assignable to "Freight," Account 101, were only $1,502,153, or any sum less than $2,599,331;

[fol. 103] (G. N. 8-c) That the amount of such revenues assignable to "Switching," Account 110, were only $38,367, or any sum less than $41,977;

(G. N. 8-d) That the amount of such freight revenues assignable to "Rents of Buildings and Other Property," Account 142, were only $46,570, or any sum less than $52,-205; and

(G. N. 8-e) That the amount of such freight revenues assignable to "Miscellaneous" were only $28,427, or any sum less than $52,621;

All as shown by the G. N.'s books of account and sworn report to the D. P. W. for 1933. (Findings VI and VII-g, Ab. 245-6, 253, compared with G. N. Ex. "11," p. 11, Ab. 164.)

(G. N. 9) Having found that an amount of the G. N.'s traffic reported to the D. P. W. for 1933 as intrastate, was in fact interstate traffic to the extent that such 1933 intrastate operating revenues were in fact only $2,179,760 instead of $3,305,348, as reported under oath to said D. P. W., the court erred in finding with respect to G. N.'s intrastate operations for 1933,—

(G. N. 9-a) That its operating expenses were $1,730,361, or any sum in excess of $1,675,206 (Finding VI, G. N. Ab. 245);

(G. N. 9-b) That its net revenues from railway operations were only $449,399, or any sum less than $504,554 (Finding VI, G. N. Ab. 246);

(G. N. 9-c) That its railway tax accruals were $335,247, or any sum in excess of $211,532 (Findings VI and VII-e, G. N. Ab. 246, 249-350);

(G. N. 9-d) That its Joint Facility rent—net debit, was $193,455, or any sum greater than $140,800 (Findings VI, G. N. Ab. 246);

(G. N. 9-e) That its net railway operating income was a deficit of $99,269, or any sum less than $132,256 (Finding VI, G. N. Ab. 246.)

(G. N. 10) The court erred in finding that in the apportionment of operating revenues received from interstate freight business to the G. N.'s Washington operating properties, such properties were not entitled to more than a

mileage prorate of such interstate freight revenues. (Find-
[fol. 104] ing VII-e, G. N. Ab. 250-252.)

(G. N. 11) The court erred in finding that the 1933 ad valorem taxes paid on the G. N.'s Washington operating properties should be apportioned as between intrastate and interstate service on the basis of the relative revenues derived therefrom (with only a mileage prorate of interstate revenues apportioned to Washington), or on any basis other than the relative use made by the G. N. of its Washington operating properties as reflected by the only available factors shown by the record, to-wit: relative car and locomotive miles (as between freight and passenger), and relative freight car miles as between intrastate and interstate freight service. (Finding VII-e, G. N. Ab. 249-250.)

(G. N. 12) The court erred in finding that the G. N.'s net debit of $794,018 for joint facility rents in Washington for 1933 were assignable to its intrastate business on the basis of relative operating expenses intrastate and interstate, or on any basis other than the G. N.'s relative use of such jointly used properties in its intra and interstate operations as reflected by the only available factors shown by the record, to-wit: relative car miles (as between freight and passenger), and relative net ton miles as between intrastate and interstate freight service. (Finding VII-d, G. N. Ab. 248-9.)

(G. N. 13) The court erred in finding that pensions paid were properly chargeable as part of the G. N.'s operating expenses for the purpose of determining its railway operating income for 1933. (Finding VII-j, G. N. Ab. 254-5.)

(G. N. 14) The court erred in finding that the G. N.'s operating expenses incident to maintenance of way and structures and freight car repairs should be determined by taking the annual average for three years instead of for 1933 alone. (Finding VII-i, G. N. Ab. 254.)

(G. N. 15) The court erred in finding that G. N.'s Exhibit "11" showed the results of the G. N.'s intrastate op-
[fol. 105] erations in Washington during 1933 with substantial accuracy. (Finding VII-k, G. N. Ab. 255.)

(G. N. 16) The court erred in finding that the G. N.'s intrastate business as a steam railway company was con-

ducted at a loss during 1933. (Finding VIII, G. N. Ab. 255.)

(G. N. 17) The court erred in finding that in proportion to revenue, the G. N.'s cost per unit of doing intrastate business is greater than its cost per unit of doing interstate business. (Finding V, G. N. Ab. 244.)

(G. N. 18) The court erred in finding that the G. N. cannot increase its local rates in Washington sufficiently to meet the occupational tax. (Finding XIII, G. N. Ab. 259-260.)

(G. N. 19) The court erred in finding that a substantial part of the G. N.'s investment in its railways in Washington was made by order of the Washington regulatory bodies. (Finding IX, G. N. Ab. 255-6.)

(G. N. 20) The court erred in permitting the G. N.'s witness, Burn, to testify over objection, as to the operating ratio in switching seven specified cars at different terminals. (G. N. Ab. 97-8, 209.)

(G. N. 21) The court erred in finding that the G. N.'s gross revenue from intrastate steam railway business for the last five months of 1933, and the amount of the occupational tax payable thereon were the several sums set set forth in Finding of Fact No. 4 (G. N. Ab. 243-4), or were any less than the several sums set forth in the G. N.'s returns made under said occupational tax act (See G. N. Ab. 47), showing a total taxable amount for said period of $1,404,095.64 and the total amount of taxes payable thereon to be $21,059.46.

(G. N. 22) The court erred in entering judgment in favor of the G. N. (G. N. Ab. 265.)

G. W. Hamilton, Attorney General; R. G. Sharpe, Assistant Attorney General, Attorneys for Appellants.

[fol. 106] IN SUPREME COURT OF WASHINGTON

No. 25683. En Banc

THE STATE OF WASHINGTON, Appellant,

vs.

GREAT NORTHERN RAILWAY COMPANY, Respondent

OPINION—Filed Aug. 13, 1935

Per CURIAM:

This is an action by the state to recover from the defendant the tax of one and one-half percent of the gross revenue imposed by chapter 191, Laws of 1933, for the months of August to December, 1933. The cause was tried to the court without a jury, and resulted in findings from which the conclusion was drawn that the plaintiff, the state of Washington, was not entitled to recover. Judgment was entered dismissing the action, from which the plaintiff appeals.

This is a companion case to that of State of Washington v. Northern Pacific Railway Co., — Wash. Dec. —, just decided. The two cases were argued at the same time and involved the same questions. In this case, the amount which the appellant is entitled to recover appears in Finding No. 4.

Upon the authority of the case above cited, the judgment will be reversed and the cause remanded, with directions to enter a judgment as herein indicated.

[fol. 107] IN SUPREME COURT OF WASHINGTON

No. 25684. En Banc

THE STATE OF WASHINGTON, Appellant,

v.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Respondent

OPINION—Filed August 13, 1935

This action was brought to recover the tax on the gross income of the defendant, imposed by chapter 191, Laws of

1933, for the months of August to December, 1933. The cause was tried to the court without a jury, and resulted in findings of fact from which the court concluded that the plaintiff was not entitled to recover. Judgment was entered dismissing the action, from which the plaintiff, the state of Washington, appeals.

The respondent owns and operates a system of railroad extending from a point on Lake Superior, Wisconsin, through Minnesota, North Dakota, Montana and Idaho, into and through a number of counties in this state, with branch lines into the state of Oregon and British Columbia. It is engaged in both intrastate and interstate commerce, carrying freight and passengers. As found by the trial court, the interstate and intrastate business in this state is inextricably commingled, and the intrastate business is conducted at a loss, and it is necessary to make up this loss from the income from interstate business.

Chapter 191 of the Laws of 1933 is entitled an act relating to taxation, and imposes taxes upon the privilege of engaging in business activities in this state. The amount of the tax is based upon the gross income. In section 2 of the act, it is provided that:

[fol. 108] "From and after the first day of August, 1933, and until the thirty-first day of July, 1935, there is hereby levied and there shall be collected from every person an annual tax or excise for the privilege of engaging in business activities. Such tax or excise shall be measured by the application of rates against values, gross proceeds of sales, or gross income, as the case may be, as follows: * * * (e) Upon every person engaging or continuing within this state in the following businesses; as to such persons the amount of tax or excise shall be equal to the gross income of the business multiplied by the rate set out after the business, as follows: * * * III. Steam railways: one and one-half per cent. * * *"

It is under this act that the tax in question was sought to be collected by the state and which was resisted by the respondent railway company, as above indicated.

The first question is whether the legislature intended to levy the tax upon the gross income of the respondent, derived from both interstate and intrastate commerce. In the portion of the act quoted, it will be observed that it is

provided that the tax is levied upon every person "engaging or continuing within this state in the following businesses." This quoted expression is used, not only in referring to the tax upon steam railways, but upon the other businesses mentioned in the act which are purely of a local nature. If it was the legislative intent to levy the tax upon the gross income from interstate commerce, it would necessarily, to that extent, be unconstitutional as being repugnant to the commerce clause of the federal constitution. About this there can be no question, as it has been many times so held by the federal supreme court.

In State v. Northern Express Co., 80 Wash. 309, 141 Pac. 757, there was involved an act of the legislature which imposed upon express companies a privilege tax of five per [fol. 109] cent, based upon the gross receipts of such companies. In that case, the expression used was that the tax was imposed for the privilege of "doing business in this state" or on "business done within the state of Washington." It was there held that the expressions used had reference to business begun and ended within this state, and that the tax, being upon intrastate commerce only, did not place a burden upon interstate commerce. It was there said:

"The phrase 'gross receipts of such express company for business done within the state of Washington,' to which the tax is alone applicable, is an expression of the legislative intent to limit this tax to business wholly within this state; that is, business begun and ended within this state."

It will be observed that, there, the expression was business done within this state or within the state of Washington. In the case we are now considering, the expression is "engaging or continuing within this state" in business. It is probably true that the expression used, which was involved in the case cited, more clearly indicates a legislative intent not to impose the tax upon interstate commerce than does the expression used in chapter 191, Laws of 1933. However this may be, when we read the expression used in that chapter, not only as applied to a business which is both interstate and intrastate, but its repeated application to businesses which are purely local, it would seem that the legislative intent was reasonably plain, and that the purpose was not to impose the tax upon interstate business,

but upon intrastate or local business only. If it be that the expression used leaves the matter in the zone of doubt, then that doubt should be resolved in favor of the constitutionality of the law. In such a case, the construction will be adopted which will harmonize the statute with the constitution and avoid a conflict therewith. Robb v. Tacoma, 175 Wash. 580, 28 P. (2d) 327.

[fol. 110] That a state, through its legislature, has no power to levy a tax which would be a direct burden upon interstate commerce is well known and understood by all lawyers and many laymen. For the court to hold that the legislature, in enacting chapter 191, intended to impose the excise tax therein provided for for the privilege of doing interstate business in this state, would be too great a reflection upon the intelligence of the members of a coordinate branch of the state government. The act, as we view it, was only intended to apply to local or intrastate business.

The next and, as we view it, the important and difficult question is whether the tax may be collected, even though the railway company, the respondent, may not be able to retire from its intrastate business without also discontinuing its interstate. In this connection, it will be assumed (a) that the respondent cannot, as a matter of law, retire from its intrastate business; (b) that it is impractical, as a matter of fact, for it to retire from its intrastate business without also retiring from its interstate; and (c) that the intrastate or local business is conducted at a loss which is taken care of by the receipts from the interstate business. Giving effect to these assumptions, inquiry must be directed then to whether the tax is valid, even though the railway company may not be able to retire from its intrastate business without retiring from its interstate, and that the intrastate business is conducted at a loss.

In the case of Sprout v. City of South Bend, 277 U. S. 163, the court had before it an ordinance of the city, in the state of Indiana, which prescribed license fees varying in amount depending upon the seating capacity of a bus, the bus company being engaged in both intrastate and inter-[fol. 111] state business and it was there held that "the ordinance is void because of the imposition of the license fee." In the course of the opinion, it was said that a state may, by appropriate legislation, require the payment of an

occupation tax from one engaged in both intrastate and interstate commerce, but, in order that the fee or tax may be valid,

"* * * it must appear that it is imposed solely on account of the intrastate business; that the amount exacted is not increased because of the interstate business done; that one engaged exclusively in interstate commerce would not be subject to the imposition; and that the person taxed could discontinue the intrastate business without withdrawing also from the interstate business."

It will be observed that one of the conditions there placed upon the right of a state to impose the tax is that the person or corporation taxed "could discontinue the intrastate business without withdrawing also from the interstate business." This last quoted expression, so far as we are informed, was first used in the case of Pullman v. Adams, 189 U. S. 420, where the tax involved was in a specific amount, levied upon "each sleeping and palace-car company carrying passengers from one point to another within the State, one hundred dollars, and twenty-five cents per mile for each mile of railroad-track over which the company runs its cars."

In the case of Cooney v. Mountain States Telephone & Telegraph Co., Vol. 79, No. 9, United States Supreme Court Law ed. Advance Opinions, page 498, there was involved a statute of the state of Montana prescribing a tax "for each telephone instrument used in the conduct of the business of operating or maintaining telephone lines and furnishing telephone service in the State of Montana." There, the telephone company, as is the railroad company here, engaged in both intrastate and interstate business, and it was [fol. 112] held that a privilege or occupation tax which a state imposes with reference to both kinds of business, through an indiscriminate "application to instrumentalities common to both sorts of commerce, has frequently been held to be invalid."

It will be observed that in none of the three cases mentioned was the tax based upon the gross income of the intrastate business. There is a difference between a tax imposed as a license to do business or upon the instrumentality and a tax based upon the gross income. If a tax be a license tax or one upon the instrumentality, it neces-

sarily inheres in the interstate as well as the intrastate business. Where the tax is upon the gross income, the income from the interstate business may be segregated from the intrastate and be held valid.

In the case of Bowman v. Continental Oil Co., 256 U. S. 642, the state of New Mexico had imposed an excise tax of two cents for each gallon of gasoline sold or used, and an annual license tax of fifty dollars for each distributing station or place of business. The oil company was engaged in both interstate and intrastate business. It was held that the two cents tax per gallon could be sustained because the income from the intrastate business could be segregated from the interstate, but that the fifty dollar tax was void because no such segregation could be made. It was there said:

"The applicable rule is that laid down in Ratterman v. Western Union Telegraph Co., 127 U. S. 411, where, in response to a question whether a single tax, assessed by a state upon the receipts of a telegraph company derived partly from interstate commerce and partly from commerce within the State, but returned and assessed in gross and without separation or apportionment, was wholly invalid or invalid only in proportion and to the extent that the receipts were derived from interstate commerce, this court unanimously answered that so far as levied upon receipts derived from interstate commerce the tax was void, but so [fol. 113] far as levied upon receipts from commerce wholly within the State it was valid. This case has been cited repeatedly with approval and its principle accepted. Western Union Telegraph v. Alabama, 132 U. S. 472, 476-477; Lehigh Valley R. R. Co. v. Pennsylvania, 145 U. S. 192, 200-201; Postal Telegraph Cable Co. v. Charleston, 153 U. S. 692, 697; Western Union Telegraph Co. v. Kansas, 216 U. S. 1, 31.

"But with the license tax it is otherwise. If the statute is inseparable, then both by its terms and by its legal operation and effect this tax is imposed generally upon the entire business conducted, including interstate commerce as well as domestic; and the tax is void under the authority of Leloup v. Port of Mobile, 127 U. S. 640, 647; Crutcher v. Kentucky, 141 U. S. 47, 58-59; Williams v. Talladega, 226 U. S. 404, 419; and other cases of that character."

In the case of Cooney v. Mountain States Telephone & Telegraph Co., supra, it was distinctly pointed out that the tax there involved was "not laid on revenue derived from monthly rates as distinguished from toll charges. It is not imposed with respect either to the nature of the revenue, or to the character of the service from which the revenue is derived, or to the manner in which the charges for the service are fixed." From what is there said it would appear to be a reasonable inference that, if the tax were of the character described in the quotation just made from the opinion, the result might be different.

In East Ohio Gas Co. v. Tax Commission, 283, U. S. 465, the state of Ohio imposed upon every corporation engaged in the business of supplying consumers within the state with natural gas for light, heat or power a tax based upon the gross receipts, and the law was sustained. The East Ohio Gas Company which resisted the tax was engaged both in interstate and intrastate business. It brought gas from the states of West Virginia and Pennsylvania over high pressure pipes, and, as stated in the opinion, this was interstate commerce until it reached the distributing pipes which supplied the consumers, and after that it became intrastate and was subject to the tax. In the course of [fol. 114] the opinion in that case, we find the same statement with reference to the conditions precedent to the right of a state to impose a tax upon a person or corporation engaged in both intrastate and interstate business, as appears in the quotation from the case of Sprout v. City of South Bend, supra. In the Ohio Gas Company case, however, the court did not apply the provision that the gas company could not retire from its intrastate business without withdrawing from its interstate business. The facts, as they appear in the opinion, make it plain that, if the gas company had withdrawn from its intrastate business, it would have completely destroyed its interstate business. The tax there involved was not one upon the instrumentality or a license tax, but was an excise or a tax upon the privilege of doing business. The result of the holding in that case, as we view it, would sustain a holding in the case now before us that the tax upon the gross income of the intrastate business was valid, even though the railway company could not withdraw from that business without also withdrawing from its interstate business. We do not look upon cases

which involve either a tax upon instrumentalities or a license tax as applicable to the law now in question which imposes, as already indicated, an excise or tax on the privilege of engaging or continuing in business.

It must be remembered that chapter 191 of the Laws of 1933 applies to every person engaging or continuing in business within this state, with a comparatively few exceptions. The law may be said to be a general one and applies to all businesses within the state. In this respect, it is somewhat analogous to a property tax which all persons, with comparatively few exceptions provided for in the statute, are required to pay upon the property owned [fol. 115] by them. The state has the authority to tax property which is used in interstate commerce and which is regularly and permanently located within its limits, where the ascertainment of the amount assessed is dependent upon the value of the property within the state, as the property of other citizens is taxed. Leloup v. Port of Mobile, 127 U. S. 640; Western Union Telegraph Co. v. Kansas, 216 U. S. 1.

Even though the respondent in this case cannot retire from its intrastate business without also retiring from its interstate business, we think that the excise tax imposed upon the gross income from the intrastate business is not such a direct burden upon interstate commerce as to require that the tax be held void.

Attention at this point should be called to chapter 4 of the Laws of 1933, which was Initiative Measure 64, and generally referred to as the "40-mill tax limit for taxation" law. In that act, it was provided that the aggregate of all taxes upon real and personal property in the state should not exceed in any one year forty mills on the dollar of assessment valuation, which should be based upon fifty per cent of the true and fair value of the property in money, with some exceptions which are not here material. The respondent, by reason of this law, has been relieved from paying a very large sum of money as taxes upon the property which it owns in this state and which was subject to taxation, even though devoted to interstate commerce. It is a matter of common knowledge that under the 40-mill tax limit law property is now paying about half of what it paid for general taxes prior to the passage of that law; in other words, that by reason of the law limiting the

amount to forty mills, the tax burden upon both real and personal property of the state has been reduced approxi-
[fol. 116] mately one-half. Having thus provided for a reduction of taxes upon real and personal property, it was necessary for the legislature to find other sources of revenue, and chapter 191 was undoubtedly passed for this reason.

So far as we are informed, the federal supreme court has at no time distinctly held that an excise tax, such as that of this state, which is imposed upon all businesses, is such a direct burden upon interstate commerce as to render the act of the legislature unconstitutional.

But it is said that the intrastate business is being conducted at a loss, and this loss must be borne by the interstate business and therefore is a burden upon interstate commerce. There is an expression in the case of Postal Telegraph-Cable Co. v. Richmond, 249 U. S. 252, that would appear to support this contention, even though the question was not necessarily involved in that case; and further, in that case there was not involved an excise tax based upon gross income, as here.

In this state, if the respondent's intrastate business is conducted at a loss, the legislature has provided a remedy, first, by application to the department of public service, with the right of review by the superior court and an appeal to this court. From the findings, it appears that an application has been made and denied by the department and that another application is pending. It does not appear, however, that the respondent has exhausted the relief granted by the statute and until it does so, it cannot be said that, even though the intrastate business is being conducted at a loss, it is such a burden upon interstate commerce as would justify holding the law unconstitutional.

The facts in the case of Postal Telegraph-Cable Co. v.
[fol. 117] Fremont, 255 U. S. 124, presented a similar question, and it was there held that, where the state law affords a means to prevent the tax from burdening interstate commerce, through an application to increase intrastate rates, the tax will not be held void, in the absence of a showing that the company had exhausted the remedy afforded by an increase of the rates on intrastate business. We see no just or legal reason why the respondent should not comply

with chapter 191, as all other businesses in this state are required to do.

So far as the opinion in the case of Great Northern Railway Co. v. State, 147 Wash. 630, 267 Pac. 506, is out of harmony with the holding in this case, it will be disapproved.

The trial court in Finding No. 4 specifically found the gross revenue from the respondents' intrastate business and the tax thereon for the period covered by this action. The appellant is entitled to a judgment for the amount as indicated in the finding.

The judgment appealed from will be reversed and the cause remanded, with directions to the superior court to enter a judgment as herein indicated.

Main, J. Beals, J. Geraghty, J.

We concur: Mitchell, J. Tolman, J. Blake, J.

[fol. 118] IN SUPREME COURT OF WASHINGTON

No. 25684

DISSENTING OPINION

STEINERT, J., dissenting:

I do not agree with the majority upon what is said to be the principal question in the case. Having conceded (a) that the respondent cannot, as a matter of law, retire from its intrastate business, (b) that it is impracticable, as a matter of fact, to so retire without also retiring from its interstate business, and (c) that the intrastate, or local, business is conducted at a loss which is taken care of by the receipts from the interstate business, the majority arrives at a conclusion which I think is incorrect and untenable.

The authorities cited in the prevailing opinion establish beyond question, as I view it, that the state may not impose a tax, no matter what its nature or variety may be, that has the effect of burdening or interfering with interstate commerce.

In Bowman v. Continental Oil Co., 256 U. S. 642, the court said:

"No doubt the state might impose a license tax upon the distribution and sale of gasoline in domestic commerce if it did not make its payment a condition of carrying on interstate or foreign commerce. But the state has not done this by any act of legislation. Its executive and administrative officials have disavowed a purpose to exact payment of the license tax for the privilege of carrying on interstate commerce. But the difficulty is that, since plaintiff, so far as appears, necessarily conducts its interstate and domestic commerce in gasoline indiscriminately at the same stations and by the same agencies, the license tax cannot be enforced at all without interfering with interstate commerce unless it be enforced otherwise than as prescribed by the statute, that is to say, without authority of law. Hence, it cannot be enforced at all."

In East Ohio Gas Co. v. Tax Commission, 283 U. S. 465, the court said:

[fol. 119] "And, while a state may require payment of an occupation tax by one engaged in both intrastate and interstate commerce, the exaction in order to be valid must be imposed solely on account of the intrastate business without enhancement because of the interstate business done, it must appear that one engaged exclusively in interstate business would not be subject to the imposition and that the taxpayer could discontinue the intrastate business without withdrawing also from the interstate business."

In Cooney v. Mountain States Tel. & Tel. Co., — U. S. —, 55 S. Ct. Rep. 477, 482, the court through Chief Justice Hughes, said:

"Where the tax is exacted from one doing both an interstate and intrastate business, it must appear that it is imposed solely on account of the latter; that the amount exacted is not increased because of the interstate business done; that one engaged exclusively in interstate commerce would not be subject to the tax; and that the one who is taxed could discontinue the intrastate business without also withdrawing from the interstate business. Sprout v. South Bend, Ind., 277 U. S. 163, 171, 48 S. Ct. 502, 72 L. Ed. 833, 62 A. L. R. 45; East Ohio Gas Co. v. Tax Commission, 283 U. S. 465, 470, 51 S. Ct. 499; 75 L. Ed. 1171."

The other cases cited in the prevailing opinion are either directly, or argumentatively, to the same effect. Under these cases, one of the essentials to the validity of a tax is that the one who is taxed could discontinue its intrastate business without also withdrawing from its interstate business.

The majority seek to make a distinction between a tax imposed as a license to do business or one upon the instrumentalities used, and a tax on gross income. They concede that a license tax to do business or a tax upon the instrumentality inheres in the interstate as well as in the intrastate business, but they hold that "where the tax is upon the gross income, the income from the interstate business may be segregated from the intrastate and be held valid." The distinction is without substance when the result in a given instance is to burden or interfere with interstate commerce. The federal government having created a field within its exclusive regulatory jurisdiction, the state may [fol. 120] not invade it, nor by any act, direct or indirect, interfere with it.

We have before us four cases, including the instant one, involving the same question. The other three are State v. Great Northern Ry. Co., post p. —, —, P. (2d) —, Pacific Tel. & Tel. Co. v. Tax Commission, post p. —, — P. 2d) —, and Home Tel. & Tel. Co. v. Tax Commission, post p. —, —, P. (2d) —. The questions being identical in all four, the same barrier exists in each against the state's right to tax. That the action of the state will interfere with interstate commerce is, to me, very apparent. If the railroad companies or the telephone companies should be permitted or be compelled to withdraw from their intrastate business, how many trains would continue to run, and how many telephones would remain in place, in this state, merely for the purpose of enabling their users to do an interstate business? Not only would all local service be discontinued, but, with the exception, possibly, of one or two large cities, the people of the state would be without interstate service as well.

If, as a matter of law, the companies may not withdraw from intrastate business, or if, as a matter of fact, it is wholly impracticable for them to do so, then such intrastate business must continue to be operated at the expense of

their interstate business. If one state be permitted to impose burdens upon interstate commerce through the medium of taxation, then all states in which the companies operate may do likewise, and the accumulated burdens thus imposed would in the end result in complete strangulation of all their interstate commerce. The sum and substance of it all is that the tax imposed on intrastate business must be borne by the proceeds from interstate business. It is, [fol. 121] therefore, a burden upon, and interferes with, interstate commerce, and for that reason is invalid.

I therefore dissent.

Steinert, J.

[fol. 122] IN SUPREME COURT OF WASHINGTON

No. 25684

DISSENTING OPINION

HOLCOMB, J., dissenting:

I concur in the views stated by Judge Steinert in the above entitled case and as to all the other like cases now pending in this court.

I wish to add, however, that I particularly deplore the indefinite, unnecessary and summary disposition of the case of Great Northern Railway Co. v. State, 147 Wash. 630, 267 Pac. 506. It leaves that case like Mahomet's coffin, suspended midway between Heaven and earth; and, as Mr. Justice Holmes once said in one of his famous dissenting opinions, henceforth, neither bench nor bar can tell whether certain cases alluded to in the majority opinion therein, in much the same way as is the above cited case in the prevailing opinion in these cases, "are to be listed in the *index expurgatorius*" or, are in the category of cases to be used in the future at pleasure.

The above cited case was the deliberate judgment of this court en banc and concurred in by all but two of the then judges of this bench, including the writer of the opinion in the instant case. It followed the decisions of the Federal Supreme Court therein cited. It was based upon the sound principle that a public utility, such as the railway company, the telephone company and the like, is compelled by law

to serve and cannot withdraw. To the same effect is Northern Pacific Railway Co. v. State, 84 Wash. 510, 147 Pac. 45.

It is manifest that these utilities cannot separate the receipts of their intrastate from their interstate business. If that be true, then it is indubitably true that the taxes in question are burdens upon interstate commerce, contravening the commerce clause and the Fourteenth Amendment of the Federal Constitution to which we are fully bound by oath to conform.

Holcomb, J.

[fol. 123] IN SUPREME COURT OF WASHINGTON

No. 25683

Thurston County No. 15417

THE STATE OF WASHINGTON, Appellant,

vs.

GREAT NORTHERN RAILWAY COMPANY, a Corporation, Respondent

JUDGMENT—September 13, 1935

This cause having been heretofore submitted to the Court, upon the transcript of the record of the Superior Court of Thurston County, and upon the argument of counsel, and the court having fully considered the same, and being fully advised in the premises, it is now, on this 13th day of September, A. D. 1935, on motion of G. W. Hamilton Esquire, of counsel for Appellant considered, adjudged and decreed, that the judgment of the said Superior Court be, and the same is, hereby reversed with costs; and remanded with directions to the Superior Court to enter judgment in favor of The State of Washington and against the Great Northern Railway Company, a corporation, for Twelve Thousand Nine Hundred Eighty-eight Dollars Thirty-five Cents ($12,988.35).

And that the said State of Washington have and recover of and from the said Great Northern Railway Company, a corporation, the costs of this action taxed and allowed at Seven Hundred Thirty-two Dollars Eighty-five Cents

($732.85) and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings in accordance herewith.

[fol. 124] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL—Filed Sept. 13, 1935

To the Chief Justice of the Supreme Court of the State of Washington:

Your petitioner, Great Northern Railway Company, a corporation, respectfully shows:

Your petitioner is the appellant in the above entitled cause.

On February 28, 1934, the State of Washington, as plaintiff, brought suit against your petitioner as defendant in the Superior Court of the State of Washington in and for Thurston County, to recover a money judgment for $21,061.44 alleged to be the amount due plaintiff as an occupation tax due under the provisions of Chapter 191, Laws of Washington 1933.

It was the contention of appellant in the trial court and the Supreme Court of the State that as a matter of fact and of law it could not withdraw from its intrastate business in the State of Washington, that its interstate business and intrastate business in Washington was and is inextricably commingled, that the intrastate business in Washington is conducted at a loss, and that the tax levied by said Chapter 191 of the Laws of 1933 would have to be paid from interstate revenues, and therefore the tax levied by said Chapter 191, Laws of 1933, was a burden on interstate commerce in violation of Article I., Section 8 of the Constitution of the United States and in violation of the due process clause of the 14th Amendment to the Constitution of the United States.

[fol. 125] Afer hearing upon the merits the trial court on April 1, 1935, entered findings of fact, conclusions of law and judgment, dismissing the action and concluding that said Chapter 191 of the Laws of 1933 violates Article I., Sec-

tion 8, and the due process clause of the 14th Amendment to the Constitution of the United States. Thereafter an appeal was taken by the State of Washington to the Supreme Court of the State of Washington, which court, on August 13, 1935, reversed the judgment of the trial court, and upheld the validity of said act as not being in violation of any of said provisions of the Constitution of the United States, and remanded said cause to the Superior Court with directions to enter a money judgment against appellant and in favor of appellee for $12,988.35 and final judgment of the Supreme Court was so entered on the 13th day of September, 1935.

The Supreme Court of the State of Washington is the highest court of said state in which a decision in this suit can be had.

That in said cause there is drawn in question the validity of a statute of the State of Washington on the ground that said statute is repugnant to the Constitution of the United States, and the decision is in favor of its validity, notwithstanding your petitioner's contention that said statute violates Article I, Section 8, and the due process clause of the 14th Amendment to the Constitution of the United States.

Therefore, in accordance with Sec. 237 (a) of the Judicial Code, and in accordance with the Rules of the Supreme Court of the United States, your petitioner respectfully shows this court that the case is one in which, under the legislation in force when the Act of January 31, 1928, was passed, to-wit, under Sec. 237 (a) of the Judicial Code, a review could be had in the Supreme Court of the United States on a writ of error, as a matter of right.

The errors upon which your petitioner claims to be entitled to an appeal are more fully set out in the assignment [fol. 126] of errors, filed herewith, pursuant to Rules 9 and 46 of the Rules of the Supreme Court of the United States; and there is likewise filed herewith a statement as to the jurisdiction of the Supreme Court of the United States, as provided by Rules 12 and 46 of the Rules of the Supreme Court of the United States.

Wherefore, your petitioner prays for the allowance of an appeal from the said Supreme Court of Washington, the highest court of said state in which a decision in this cause can be had, to the Supreme Court of the United States, in order that the decision and final judgment of the

said Supreme Court of the State of Washington may be examined and reversed, and also prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court of the State of Washington, under his hand and the seal of said Court, may be sent to the Supreme Court of the United States, as provided by law, and that an order be made touching the security to be required of the petitioner, and that the cost and supersedeas bond tendered by the petitioner be approved, and that the said appeal may operate as a supersedeas.

Dated this 13th day of September, 1935.

F. G. Dorety, Thomas Balmer, Edwin C. Matthias,
Attorneys for Petitioner.

[File endorsement omitted.]

[fol. 127] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed Sept. 13, 1935

Statement

The Supreme Court of the State of Washington found that petitioner owns and operates a system of railroad from the cities of St. Paul and Duluth in Minnesota, and Superior in Wisconsin, through the intermediate states into and through the State of Washington, and is engaged in both intrastate and interstate commerce by means of said railroad. It held that petitioner could not as a matter of law, retire from its intrastate business while continuing its interstate business. It found that it is impracticable, as a matter of fact, for petitioner to retire from its intrastate business wihout also retiring from its interstate business; and further found that "the intrastate business is conducted at a loss which is taken care of by the receipts from the interstate business."

Assignment of Errors

Petitioner, Great Northern Railway Company, a corporation, assigns the following errors in the record and proceedings in this cause:

(1) The Supreme Court of the State of Washington having found that appellant is engaged in both intrastate commerce and interstate commerce, and having held that as a [fol. 128] matter of law it cannot withdraw from its intrastate business without also withdrawing from its interstate business, erred in holding that Chapter 191, Laws of 1933, does not violate Article I, Section 8 of the Constitution of the United States.

(2) The Supreme Court of the State of Washington having found that appellant's interstate business and intrastate business in Washington is inextricably commingled, and that as a matter of fact and as a practical matter appellant cannot withdraw from its intrastate business without also withdrawing from its interstate business, erred in holding that Chapter 191, Laws of 1933, does not violate Article I, Section 8 of the Constitution of the United States.

(3) The Supreme Court of the State of Washington having found that appellant's intrastate business is conducted at a loss which must be borne by the income from its interstate business, erred in deciding that the tax imposed by Chapter 191, Laws of 1933, does not violate Article I, Section 8 of the Constitution of the United States.

(4) The Supreme Court of the State of Washington having found that appellant's intrastate business is conducted at a loss which must be borne by income from its interstate business or income earned or received in other states, erred in refusing to hold that Chapter 191, Laws of 1933, violates the due process clause of the 14th Amendment to the Constitution of the United States.

(5) The Supreme Court of the State of Washington having found that appellant's intrastate business is conducted at a loss which must be borne by income from its interstate business, erred in holding Chapter 191, Laws of 1933, and the tax imposed thereby, does not violate Article I, Section 8 of the Constitution of the United States, for the stated reason that appellant has not exhausted its

remedy (by writ of review) to obtain intrastate rate increases and because that circumstance is immaterial, not [fol. 129] supported by and is contrary to the facts found in Finding 18.

(6) The Supreme Court of the State of Washington for each of the reasons contained in the preceding assignments erred in reversing the judgment of the Superior Court of Thurston County and in rendering judgment in favor of the State of Washington against appellant for the tax imposed by Chapter 191, Laws of 1933, in the sum of $12,988.35.

Prayer for Reversal

Wherefore, on account of the errors specified herein appellant prays that the judgment of the Supreme Court of the State of Washington in this cause dated the 13th day of September, 1935, be reversed and judgment here entered or directed in favor of appellant.

Dated this 13th day of September, 1935.

F. G. Dorety, Thomas Balmer, Edwin G. Matthias,
Attorneys for Appellant.

[File endorsement omitted.]

[fol. 130] [File endorsement omitted]

In Supreme Court of the United States

[Title omitted]

Order Allowing Appeal—Filed Sept. 13, 1935

The petition of the Great Northern Railway Company, a corporation, the appellant in the above entitled cause, for an appeal in the above cause to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Washington, having been filed with the Clerk of this Court and presented herein, accompanied by assignment of errors and statement as to jurisdiction, all as provided by Rule 46 of the Rules of the Supreme Court of the United States, and the record in this cause having been considered, it is hereby

Ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the final judgment dated the 13th day of September, 1935, of the Supreme Court of the State of Washington as prayed in said petition, and that the Clerk of the Supreme Court of the State of Washington shall within sixty days from this date make and transmit to the Supreme Court of the United States, under his hand and the seal of said Court, a true copy of the material parts of the record herein, which shall be designated by præcipe or stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

It is further ordered that said appellant shall have a good and sufficient cost and supersedeas bond in the sum of [fol. 131] $25,000.00, that said appellant shall prosecute said appeal to effect and answer all damages and costs if it fails to make its plea good, and that said supersedeas bond, when filed and approved, shall stay the sending down of the mandate herein and of all proceedings in this cause and the enforcement of said Chapter 191, Laws of 1933, against appellant until the final disposition of this cause by the Supreme Court of the United States.

It is further ordered that appellee, the State of Washington, shall have the right to move for increase of said bond if, at any time, it shall deem itself insecure.

Dated this 13th day of September, 1935.

John F. Main, Acting Chief Justice of the Supreme Court of the State of Washington.

[fols. 132–134] Supersedeas bond on appeal for $25,000, approved and filed Sept. 13, 1935, omitted in printing.

[fols. 135 & 136] Citation, in usual form, showing service on G. W. Hamilton et al., filed Sept. 13, 1935, omitted in printing.

[fol. 137] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD ON APPEAL TO THE UNITED STATES SUPREME COURT—Filed Oct. 16, 1935

To the Clerk of the Supreme Court of the State of Washington:

You will please make and transmit to the United States Supreme Court under your hand and the seal of the Supreme Court of the State of Washington a true copy of the following material parts of the record in the above entitled cause:

1. Summons.
2. Complaint.
3. Answer.
4. Defendant's Supplemental Answer Amending Fourth Affirmative Defense.
5. Reply.
6. Interrogatories Propounded by Plaintiff to Defendant.
7. Defendant's Answers to Interrogatories.
8. Defendant's Amended Answers to Interrogatories.
9. Findings of Fact and Conclusions of Law of the Superior Court of the State of Washington for Thurston County.
10. Judgment of the Superior Court of the State of Washington for Thurston County.
11. Notice of Appeal to Washington Supreme Court.
12. Assignment of Errors in Brief of the State of Washington, Appellant in the Washington Supreme Court.

[fols. 138 & 139] 13. Opinion of Washington Supreme Court in Cause No. 25683.

14. Opinion of Washington Supreme Court in Cause No. 25684.
15. Judgment of Washington Supreme Court.
16. Petition for Appeal to United States Supreme Court.
17. Assignment of Errors and Prayer for Reversal.
18. Statement as to Jurisdiction on Appeal.
19. Order Allowing Appeal.
20. Cost and Supersedeas Bond.

21. Acknowledgment of Service of Petition for Appeal, Order Allowing Appeal, Assignment of Errors and Prayer for Reversal, and Statement as to Jurisdiction.
22. Citation, with Acknowledgment of Service.
23. This Præcipe.

Dated at Seattle, Washington, this 15th day of October, 1935.

F. G. Dorety, Thomas Balmer, Edwin C. Matthias, Attorneys for Appellant. Address: 404 Union Street, Seattle, Washington.

Service of a copy of the foregoing Præcipe acknowledged this 16th day of October, 1935.

G. W. Hamilton, & R. G. Sharpe, Attorneys for Appellee. Address: Temple of Justice, Olympia, Washington.

[File endorsement omitted.]

[fol. 140] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

APPELLANT'S SUPPLEMENTAL PRÆCIPE FOR TRANSCRIPT OF RECORD ON APPEAL TO THE UNITED STATES SUPREME COURT —Filed Oct. 22, 1935

To the Clerk of the Supreme Court of the State of Washington:

In addition to the portions of the record designated in the Appellant's præcipe of October 15th, 1935, you will please incorporate in the transcript of the appeal of this case to the United States Supreme Court the following:

(a) Pages "A" to "F" inclusive, and pages 1 to 11, inclusive, of Defendant's Exhibit 11;
(b) This supplemental præcipe.

Dated at Seattle, Washington, this 21st day of October, 1935.

F. G. Dorety, Thomas Balmer, Edwin C. Matthias, Attorneys for Appellant. Address: 404 Union Street, Seattle, Washington.

Service of a copy of the foregoing Supplemental Præcipe acknowledged this 22nd day of October, 1935.

G. W. Hamilton, R. G. Sharpe, Attorneys for Appellee. Address: Temple of Justice, Olympia, Washington.

[File endorsement omitted]

[fol. 141] IN SUPREME COURT OF WASHINGTON

In the Matter of the Adoption of Rules of Pleading, Procedure and Practice

RULE VI

Abstracts

In every case in which the statement of facts contains over 100 pages, an original and two legible copies of a typewritten abstract of the record shall be filed with the Clerk of the Supreme Court along with the briefs of the party preparing the same. The typewritten abstract shall be in the same form as the transcript in the cause, shall be indexed, and shall contain appropriate references by pages to the transcript or statement of facts. Printed abstracts, bound separately from the printed briefs, but of the same size, type and form as the printed briefs, will be given the same effect by the court as typewritten abstracts. The abstract shall be substantially in the following form.

(Suggested forms omitted.)

[fol. 142] IN SUPREME COURT OF WASHINGTON

In the Matter of the Adoption of Rules of Pleading, Procedure and Practice

ABSTRACTS OF RECORDS

(Amended Rule VI)

Rule VI of the Rules of the Supreme Court, found on page XXXV of volume 159 of the Washington Reports, be

and the same is hereby amended by eliminating therefrom all requirements relating to the abstracting of pleadings.

[fol. 143] IN SUPREME COURT OF WASHINGTON

In the Matter of the Adoption of Rules of Pleading, Procedure and Practice

RULE VII

Supplemental Abstracts

1. If the respondent is not satisfied with the appellant's abstract, he may cause to be typewritten, or printed, a supplemental abstract of the matter omitted which he deems essential to an understanding of the questions presented on the appeal. The supplemental abstract shall follow the form of the original abstract, shall refer to the page of the original abstract where the omitted matter is to be inserted, and shall contain appropriate references to the transcript, or statement of facts, and shall be served on the adverse party; Provided, That if, in the opinion of this Court, the respondent's supplemental abstract was necessary to the consideration of the questions presented, and was made thus necessary by reason of the fact that the appellant's abstract did not fairly state the record or the evidence, the costs of such supplemental abstract shall be charged to the appellant regardless of the termination of the case.

2. The appellant may supplement his original abstract without leave of court at any time before the respondent has filed his brief. Such supplemental abstract shall follow the form of the original abstract, shall contain appropriate references to the pages of the transcript or statement of facts where the matter abstracted can be found, and shall show at what pages of the original abstract the new matter is to be inserted. The supplemental abstract shall be served on the adverse party. After the respondent has filed his brief, supplemental abstracts may be filed therein only by leave of the Chief Justice.

[fol. 144] IN SUPREME COURT OF WASHINGTON

In the Matter of the Adoption of Rules of Pleading, Procedure and Practice

RULE VIII

Contents and Style of Briefs

1. Briefs shall be printed throughout in plain, clear type, not smaller in size than eleven point, on unglazed white paper, and shall contain a clear statement of the case so far as deemed material by the party, with reference to the pages of the abstract for verification in all instances where an abstract is required. In other instances the reference shall be to the original record.

2. Each error relief on shall be clearly pointed out and separately discussed under appropriate designated headings. Where there are several assignments presenting the same general questions, they may be discussed together.

[fol. 145] IN SUPREME COURT OF WASHINGTON

In the Matter of the Adoption of Rules of Pleading, Procedure and Practice

RULE XVI

Exceptions to Findings of Fact and Conclusions of Law

1. It shall not be necessary or proper, in order to obtain appellate review thereof, to take or enter an exception to findings of fact or conclusions of law of a court or judge upon a case or part of a case, either legal or equitable, tried without a jury, nor shall it be necessary to take exceptions to the refusal of the court to make proposed findings or proposed conclusions of law.

2. This rule shall apply and be applicable to cases now pending as well as to those which may be hereafter instituted.

[fol. 146] [File endorsement omitted]

[fols. 147-186] IN SUPREME COURT OF WASHINGTON

No. 25683

STATE OF WASHINGTON, Plaintiff and Appellant,

vs.

GREAT NORTHERN RAILWAY COMPANY, a Corporation, Defendant and Respondent

Appellant's Abstract of Record—Filed May 24, 1935

Appeal from the Judgment of the superior court of Thurston County. Hon. D. F. Wright, Judge.

[fol. 187] **Statement of Evidence**

On the 22nd day of October, 1934 (St. 2), the cause was tried by the court sitting without a jury, wherein the following proceedings were had:

[fol. 188] Supplemental Answer

Defendant's counsel asked and was granted leave to file a supplemental answer amending Defendant's fourth affirmative defense, with the understanding that if plaintiff did not reply thereto, its original reply would be deemed to stand to the supplemental answer (St. 3-4).

Plaintiff's Evidence

OFFERS IN EVIDENCE

Plaintiff's counsel offered in evidence Plff's Ex. "1", the interrogatories propounded to defendant, and Plff's Ex. "2", defendant's answers to such interrogatories (St. 5).

Plff's Ex. "2" was received in evidence over defendant's objection that the original answers were not admissible unless the amended answers were also offered (St. 6, 12).

Plff's Exs. "3" to "7", being the defendant's returns to the Tax Commission under the Occupation Tax Act for the months of August to December, 1933, were then received in

evidence (St. 13-14) over defendant's objection that defendant's amended returns had not also been offered in evidence (St. 14-15). Whereupon plaintiff rested.

[fol. 189] PLAINTIFF'S EXHIBITS "1" AND "2"

Exhibit "1" are the interrogatories propounded by plaintiff to defendant, and Exhibit "2" are the answers of defendant thereto, verified by Geo. H. Hess, Jr., defendant's Comptroller, who deposes as follows:

"That the foregoing answers to the interrogatories propounded by plaintiff were prepared under his supervision for and in behalf of said Great Northern Railway Company; that said answers are to affiant's knowledge true and correct."

Said interrogatories and the answers thereto are as follows:

Interrogatory One. State whether or not your books of account showing your revenues and expenses incident to the various kinds of business carried on by you in the state of Washington since and prior to August 1st, 1934, are kept in accordance with the uniform system of accounting prescribed by the Interstate Commerce Commission. (Plff's Ex. "1".)

Answer. Yes. (Plff's Ex. "2".)

Interrogatory Two. * * * State how long your books of account have been kept in accordance with such system.

Answer. Since on or about July 1, 1914. (Plff's Ex. "2".)

Answer to Interrogatory Three. In reporting revenues and expenses to the Tax Commission and Department of Public Works of the State of Washington the method prescribed by the Interstate Commerce Commission for making reports to it has been followed. The Interstate Commerce Commission has prescribed no rules or method for reporting to the State of Washington the revenues and expenses within that state.

Interrogatory Five. State by the following accounts and account numbers (or by such accounts and account numbers as the same appear upon your books of account) the total

amount of the railway operating revenues received by you, or which have accrued, as a result of business transacted by you wholly within the state of Washington (a) during each of the months, August, 1933, to December, 1933, inclusive, and (b) from August 1st, 1933, to December 31st, 1933, inclusive.

Answer. The railway operating revenues received or accrued from business transacted wholly within the State of [fol. 190] Washington during the month of August, 1933, to December, 1933, inclusive, by accounts stated in Interrogatory (5), so far as shown by the accounts kept by the Great Northern Railway Company are as follows:

(Here follows a statement of said revenues for said months as shown by the tabulation set forth on the following page. Plff's Ex. "2".)

[fol. 191]

Acct. No.	Name of Account:	August to December, 1933, inclusive				
		August 1933	September 1933	October 1933	November 1933	December 1933
101	Freight	$269,455.17	$264,034.13	$298,743.63	$257,344.55	$168,788.99
102	Passenger	26,509.89	27,063.03	23,016.41	27,241.20	31,767.78
103	Excess Baggage	194.83	277.10	160.48	165.74	111.63
104	Sleeping car	.....	.....	.....	.....	.....
105	Parlor and chair car	360.68	268.50	265.45	219.00	313.35
106	Mail	.....	.....	.....	.....	.....
107	Express	.....	.....	.....	.....	.....
108	Other passenger train	130.61	114.91	105.39	210.99	174.25
109	Milk	1,076.74	777.42	813.08	498.68	6,869.45
110	Switching	3,739.91	3,511.81	5,868.34	5,214.68	2,823.96
111	Special service train	.....	.....	.....	.....	.....
112	Other freight train	.....	.....	.....	108.36	.....
	Total	301,467.83	296,046.90	328,972.78	291,003.20	210,849.40
131	Dining and buffet	2,721.37	2,432.83	2,291.53	1,828.15	2,435.91
132	Hotels and restaurants	1,362.87	1,465.35	1,381.47	1,328.73	1,254.20
133	Station, train and boat privileges	37.25	30.15	31.06	16.56	37.00
134	Parcel room	291.15	318.25	257.80	190.70	225.10
135	Storage—Freight	201.66	333.42	64.08	233.83	28.92
136	Storage—Baggage	52.29	65.93	49.54	41.06	39.13
137	Demurrage	343.00	129.00	240.00	559.00	93.00
138	Telegraph and telephone	524.92	414.00	440.90	349.23	463.77
142	Rent of buildings and other property	4,991.55	6,047.65	4,105.58	5,125.39	7,392.86
143	Miscellaneous	5,381.12	5,703.05	7,289.78	7,356.75	8,057.60
151	Joint facility—Cr	686.61	28.33	107.32	412.11	3,756.48
152	Joint facility—Dr	3,820.02R	1,185.59R	419.74R	.56R	7.57R
	Total	12,773.77	15,782.37	15,839.32	17,440.95	23,776.40
	*Grand Total	314,241.60	311,829.27	344,812.10	308,444.15	*234,625.80

* Includes revenues from U. S. Government and from State of Washington.
"R" indicates red figure.

[fol. 192] Following the foregoing figures, appears the following as part of the answer to Interrogatory Five:

"The following explanation is necessary with respect to certain of the above accounts:

"132—Hotels and Restaurants: The amount shown in this account is for income received from the operation of station restaurants at which employees, the public and passengers are served.

"133—Station, Train and Boat Privileges: This account includes revenues from weighing, vending and automatic machines and from advertising in stations and on trains, and includes the privilege of operating newspaper stands, selling papers and the amount received from telephone companies for the privilege of operating pay telephones in the depots. The details of the items in this account are not kept.

"135 and 136—Storage of Freight and Baggage: This account represents amount collected from storage of freight and baggage, and it is not known whether the proceeds are collected from the storage of interstate or of intrastate business.

"137—Demurrage: This account represents all demurrage paid in the state. No accounts are kept segregating the amount collected as between intrastate and interstate freight.

"142—Rents of Buildings and Other Property: This account includes revenue received from other companies for the exclusive use by them of certain operating properties owned by defendant.

"143—Miscellaneous: This includes revenue from weighing cars for other companies and individuals, revenue from sale of cinders and other miscellaneous revenue.

"151 and 152—Joint Facilities—Credit and Debit: These two accounts are applicable to operation of pool trains between Seattle and Portland. Some months defendant collects more than its proportion of the revenue and has to make payment to the other companies and, in other months, the other companies collect more than their proportion and have to make payment to defendant."

[fol. 193] PLAINTIFF'S EXHIBITS "3" TO "7" INCLUSIVE

Are certified copies of Business Tax Returns made by the Great Northern Railway Company (by Geo. H. Hess, Jr., Comptroller), for each of the months of August to December, 1933, inclusive, and contain the following data:

	August to December, 1933, inclusive					
	August 1933	September 1933	October 1933	November 1933	December 1933	August 1933 to December1933
Gross Amount	$295,284.98	$293,022.07	$325,244.36	$287,018.44	$203,525.79	$1,404,095.64
Proceeds of sales or income derived wholly in interstate or foreign commerce						
Proceeds of sales to the United States Government, its departments or institutions						
Proceeds of sales to the State of Washington, its departments or institutions						
Total amount of deductions						
Taxable amount	295,284.98	293,022.07	325,244.36	287,018.44	203,525.79	$1,404,095.64
Amount of tax	4,427.29	4,395.33	4,878.67	4,305.28	3,052.89	21,059.46

PLAINTIFF'S EXHIBITS "3" TO "7" INCLUSIVE

Are certified copies of Business Tax Returns made by the Great Northern Railway Company (by Geo. H. Hess, Jr., Comptroller), for each of the months of August to December, 1933, inclusive, and contain the following data:

[fol. 194] MOTION FOR NONSUIT

Defendant's counsel thereupon moved for a dismissal for lack of proof, in that the amended answers to interrogatories and amended returns under the Occupation Tax Act had not been offered in evidence (St. 15). The court reserved its ruling on such motion (St. 23).

Defendant's Evidence

Def's. Exs. "8" and "9" and Def's. Exs. "10", being defendant's so-called amended answers to interrogatories, were thereupon received in evidence (St. 23-24, 26). Defendant's counsel then read into the record a purported letter addressed to plaintiff's counsel under date of August 8, 1934, as follows:

"I am enclosing herewith copy of amended answers to interrogatories in the above case. I am filing amended returns with the Tax Commission in accordance with the interrogatories. I am sending the original copy of the amended answers to the clerk for filing. Will you kindly acknowledge receipt to me."

W. M. BURN, called and sworn as a witness on behalf of defendant, testified as follows:

I reside at St. Paul, Minnesota, and am statistician for the G. N. My experience commences in railroad work with the Pennsylvania Railroad Company. I was employed by them for about ten years in Eastern Pennsylvania, at Harrisburg, Pennsylvania, and I was employed in the capacity of a stenographer and an accountant. Later I went with the State Water Supply Commission of Pennsylvania, as an accountant, and at the time of the World War I was in Washington with the United States Railroad Administration, with the operating statistical section where I had charge of a squad of men in preparing operating statistics relating to the United States. The operating statistics I was then handling dealt with the performance of all the railroads in the United States subject to the U. S. Railroad Administration (St. 28). At the time of the return of the roads to private control, I then went to the Great Northern in St. Paul as Assistant Statistician. I was employed in that capacity for about five years, from April 1, 1920, at

[fol. 195] which time I was made statistician of the company, which position I now hold.

As statistician my duties consist principally of working up studies for rate hearings and also preparing information for our executive Department in connection with various matters that they wish information on. In general, these are studies to determine the cost of performing various services on the railroad, and to measure one method of operating against another. As statistician I have access to all the company's original books and records. I am familiar with the reports made by the G. N. to the Washington Tax Commission and the D. P. W.

I have prepared a study to determine the revenues and expenses of the G. N. in handling its intrastate business in the State of Washington. I have been engaged in that study since about June 15, 1934 (St. 29). You ask what sources of information I have used. I have used the records and documents in our general office, the annual reports to the D. P. W., and also some special studies. You ask if, in the case of the special study that I used, I have brought with me all of the underlying data to which I referred. Yes, sir, the basic data is in the court room. G. N. Ex. "11" is an exhibit prepared as a result of my study. The results shown therein are correct to my best knowledge and belief. You ask me to explain Exhibit "11".

The most logical way, I think, to explain the exhibit would be to start from the final page and work through the exhibit to the first page, because it is built up on that principle. And from pages 16 to 27 I have included on those pages the data relating to yard (St. 30) switching costs, that is the yards where we have regularly assigned switch engines, our major terminals. So I will start with pages 25, 27 and 27, which are similar in character, and reflect what is ordinarily known as the engin--hour breakdown. These pages are the result of an actual field study conducted during the seven days ended June 15, 1934. In [fol. 196] making these studies we instructed the switch foreman—those are the men in charge of yard switching crews, to keep a daily record of every movement they actually made during their shift, each shift, consisting of eight hours. And they tabulated this information on cards in a manner similar to the information shown here. The original reports made by the switch foremen are in the

court room. These terminal studies were conducted under the supervision of certain operating officials.

The information shown on pages 25, 26 and 27 will be used later in the study, and they are really the basic information for determining switching costs per car (St. 31). Pages 23 and 24 relate to the cost of maintenance and operation of the major terminals in the state of Washington for the seven-day test period. And maintenance of way and structures is a matter of record—the cost of maintenance of way and structures is a matter of record in our general office as far as the yard switching costs are concerned. And the costs were based on the annual average of the three years ended December 31, 1933. Under maintenance of equipment we obtained the cost of steam locomotive repairs, depreciation and retirements on the basis of the average cost per locomotive mile of those items for each class of engine used in these terminals. In other words, we have many different classes of engines. Some of them are, in accordance with their weight, more expensive to maintain, and by using the engine class we were able to develop a definite figure as to the maintenance cost. Those were accounts 308 to 310—Transportation expenses. In the case of both maintenance of way and structures and maintenance of equipment, I used three-year average cost figures for the three years ended December 31, 1933 (St. 32).

(The witness was then asked what he had to say of the propriety of using a three-year period instead of the figures for 1933. Plaintiff's counsel objected on the ground that the witness was an accountant, not an operating man, and [fol. 197] was not shown to have knowledge of the condition of the road either at the beginning or end of 1933, and whether or not there was any deferred maintenance. The objection was overruled (St. 32-33). Whereupon the witness testified:)

I may answer in this way, that in my experience as an accountant and statistician I have never seen maintenance of way and structures and maintenance of equipment expenses based on one year alone. I have never seen any statistics to that effect. And by using only one year, especially for maintenance of way and structures, I don't think you get a complete picture of the situation. For example, I would take for an example if a road has some large washout or a bridge destroyed, it may cost a large sum to re-

store it, and they may elect, instead of putting all of that cost into the year in which it happened, to spread it over three or four years. And you can readily conceive of some yards whose business was so poor they spend little or no money for maintenance. And if you would take that year, your maintenance costs, of course, would not reflect the true condition. And another thing that I might mention, the G. N. during this present year has borrowed between five and six million dollars from the U. S. government under the PWA fund to use for maintenance, which should have been done prior to this time, but owing to the depression and so on we did not have the money. And this money that we borrow must all be spent in the year 1934. In other words, you cannot carry any of that expense over into the next year. So if you were to use the year 1934 alone, if this study was based on the year 1934 alone, then your maintenance costs (St. 33) would be quite high in accordance with the plaintiff's theory.

(Plaintiff's counsel thereupon moved to strike the testimony contained in the last paragraph for the reason that the witness was not qualified to testify, and that the portion relating to the Federal Loan and the conclusions the Federal officers may have arrived at was not material, and was pure hearsay. The motion was overruled (St. 34). Whereupon the witness continued:)

[fol. 198] You ask if the money actually spent on the maintenance of the railroad in a given year measures the deterioration of its property during that year, necessarily. No, sir, the upkeep of your property is based on two factors, one due to the wear—due to weather conditions, and the other due to use. Now it has generally been conceded by maintenance engineers that two thirds of your depreciation is due to wear and one third to use. So one year would not reflect true conditions as regards maintenance of way. That is, a railroad might spend the money for maintenance when it had it, but nevertheless it would be incurring the damage and deterioration of its property by the action of the elements when it did not have the money to spend. And the same may be said of locomotives and freight cars. They deteriorate, too, through age and obsolescence, (St. 34) regardless of the use in a particular year.

Pages 21 and 22 of Exhibit "11" have been prepared to show the cost per element of switching in the terminals re-

ferred to. In other words, the information shown in the first two columns "Description of Service and Total Hours" was brought forward from pages 25, 26 and 27. The numberals indicated in the column headed "item number" will be later used in showing the movement of cars through the terminal. In other words they will be code numbers, a little later in the exhibit. The third column on pages 21 and 22, total cars, are also the result of our field study. The switch foreman in (St. 35) making their reports also gave us the number of cars, loads and empties, handled during the seven-day test period. The next column "Number of cars handled per Hour" is simply the division of the total hours into the total cars. The cost per engine hour is again brought forward from sheet No. 24. That item is shown at the bottom of Sheet No. 24. And the cost per car in each element of service is again obtained by dividing the number of cars handled per hour into the cost per engine hour. And later in the exhibit it will be shown how these costs per car are applied.

[fol. 199] Now turning to pages Nos. 16 to 20, inclusive, which are the final pages in regard to the terminal studies, I will explain how we arrive at the switching cost per hour. On page 16 it will be noted that we have shown information for the Hillyard, Spokane terminal, over on the left-hand side of the sheet. Hillyard is the G. N.'s large classification yard adjacent to the City of Spokane. I have considered the terminal as one because they are adjacent and the same engines work in both. In Item 1 we show the movement of Hillyard class yard to Spokane industries. Now you will notice under elements of switching service performed, there are seven code numbers and I will interpret those code numbers by referring to page 21. You will notice at the top of the page, on page 21, item 1 classification "Hillyard". That is referring to this same item, the one on page 16. Now that cost would be 55.5 cents. That is the first element that we are considering (St. 36). Item 9, again referring to page 21, is the weighing of cars. This particular group of cars were weighed. So you would add another item of 64.4 cents. The next item 3, referring to page 21, is transfer service between Hillyard and Spokane, and adding another item of 52.9 cents. Item 6 industrial switching at Spokane would add $2.04, approximately. I have two sixes there. That is loaded move-

ments into the industry. You will notice the item says G. N. line haul cars terminated there. That is the movement in. Now we have followed the empty movement of that car away from the industry. In other words, the car, after being made empty at the industry, must be taken back to our classification yard again. It is going out of that service. So that the second 6 refers to the empty move from the industry, and we again apply the empty move cost of $2.04. Item 3 again transfers the car from Spokane to Hillyard, which is our main classification yard in that district. Therefore, adding another cost of 52.9 cents, and when it reaches the classification yard, the car is classified and put some place for future use. That again adds [fol. 200] 55.5 cents. The sum of all of those items amounts to $6.91 as shown under the heading cost per car. And our investigation showed that during this seven-day period two cars were handled in that manner. Therefore the total cost of handling those two cars was $13.82. This explanation is typical of the way I have handled all the cars. Now this information relates strictly to intrastate cars handled during (St. 37) this period. We had the car numbers of every intrastate car moving and then after having obtained that information we sent a list of each official of each terminaal studied, and they traced the movements through for us, and the movements, as I have shown here, are the actual movements.

This study relates to carloads, but I have also attached to that loaded car any empty movement which would be proper to assign to it (St. 38).

Pages 16, 17 and 18 refer to strictly carload business intrastate. Pages 19 and 20 refer strictly to L. C. L. business intrastate. By "L. C. L." I mean "less than carload," or merchandise traffic. You ask me to make an explanation of the handling of a typical L. C. L. shipment. On page 19 under the head of Hillyard-Spokane Terminal G. N. haul line cars terminated, Item 1 shows from Spokane class yard to Spokane freight hours. The Code "2" relates to classification at Spokane. That is (St. 39) the loaded movement. Code "7" relates to freight house switching at Spokane, the loaded movement. And again we use Code "7" for the empty movement away from the freight house, and classification at Spokane. That covers all of the movements on eleven cars during this seven-day

period. That is the cost of $2.27 a car is obtained in the same manner that I explained for carload traffic. That was what we call L. C. L. freight. In other words, it is handled under a different rate, and it was strictly less than carload local traffic. On page 20 you will notice in the lower right-hand corner that I have taken care of that situation. The total switching cost for the L. C. L. traffic [fol. 201] was $675.99, of which 77.78 per cent was chargeable to intrastate L. C. L. traffic, reducing the cost shown of $676 to $525.79, which puts that cost strictly on an intrastate basis. Plaintiff's counsel asks if I later reduced this L. C. L. movement to terms of car movements. I handled this feature in somewhat a different manner. Instead of using it in relation to cars, I have used these costs in relation to revenue net ton miles. In that way you avoid duplication. You see (St. 40) the same cars represent moving in Hillyard-Spokane terminal, and the identical car may be moving in Interbay, Seattle, and in that way it would be rather difficult to determine what would actually be the cost for one car. So by putting it on a revenue net ton mile basis, I think you overcome that feature of it (St. 41).

That completes my terminal study. That covered the week of June 9, 1934. You ask what consideration I gave the question whether that week was a week representative of operation conditions in 1933. Of course, we were obliged to make this study rather hurriedly because we wanted to get ready for this case and it so happened that the choice of this week developed that the engine hours for this seven day period as compared with the year 1933 were not 1/49 of that year, indicating that our cost would be somewhat understated. Instead of being 1/52nd, it would be 1/49th. This is the engine hours that are applicable to both intrastate and interstate switching. You ask why a week in which we had 1/49th of the year's business would produce lower costs per unit of traffic than a week in which we had 1/52nd of the year's business. Well, it indicates that your volume of yard switching locomotive miles are greater during that week and, while that is true, there are a great many costs which would not be variable with the locomotive hours. You have certain fixed costs in a terminal and therefore, by (St. 42) dividing all this number of inflated locomotive hours for the seven day period, you are reduc-

[fol. 202] ing your average cost. When the volume of business is greater, the cost per unit of traffic is less. That is because a large proportion of the elements of railroad cost are constant, regardless of the volume of traffic.

Referring to Ex. "11", page 15. In preparing a study of the cost of operations, there are always various accounts under the I. C. C. classification and, as included in the D. P. W. annual report, accounts that must be treated as indirect. In other words, it would be very difficult to say how much would be chargeable to this account and how much to that account so, after determining the charges to accounts which we may term as direct, we apportion the balance of the accounts on a percentage basis. In other words, they would be apportioned on the relation of the direct to the indirect. For example, on page 15 we show transportation expense freight proportion after excluding the amount which I have included in our terminal study for transportation expense and as shown in item 1, that figure is $1,786,380. That item is based on figures in our annual report for the year 1933. In item 2 I show (St. 43) what we have considered direct expense in our study of train operations which are wages of train engine men and motor men, wages of train men, fuel, water and lubrication and other supplies for train locomotives, engine house expense—train—station employees, station supplies and expense. Those are the direct accounts which you will find in my exhibit on later pages. And item 3 is merely the difference between item 1 and item 2 which will be used as indirect expense and item 4 is the percentage of the indirect to the direct cost and that is typical of the way in which I have developed a percentage of indirect expense to be applied later to the direct cost.

The items under "General" can be explained in the same way. In other words, referring to item 5, I show a total operating expense, freight exclusive of general expense for the calendar year 1933 excluding yard switching cost, [fol. 203] freight proportion in percentages charged to transportation charges $3,747,649. Now, the way I arrived at that figure was to—well, now the total operating expenses for the year 1933 were first taken from our annual report to the D. P. W. That would include maintenance of way, maintenance of equipment, traffic and the road proportion of (St. 44) transportation. I have thrown out of

the transportation the amount chargeable to yard service which would leave $1,786,380 so the total of those four general groups of accounts would be the same as shown for item 5. Now, under general expense, the total was $233,497 freight proportion as shown in the annual report. I have a work sheet on that.

Page 14 was handled in a manner similar to page 15 and I don't think any further comments are necessary. I also have a work sheet on that, as to my methods.

Page 13 relates to train switching expense applicable to interstate and intrastate traffic in the state of Washington only for the seven day period ended November 21st, 1933. It will be noted that while the yard study was made during June, 1934, we used this period (St. 45) of November, 1933, for the road cost study. The first group of accounts are the maintenance of equipment charges relating to locomotive repairs, depreciation and retirement. Those are the direct maintenance of equipment expenses which we have used in the study. The unit costs are based on the three year average and we have separated these costs between through trains, local trains and the freight proportion of mixed trains. The cost is based on the locomotive miles. For example, under through freight trains, we found that during the test period our locomotives made 206 miles in switching service. I mean by that train switching where we have no terminal service. At intermediate stations and initial and final terminals applying the unit cost shown in column 2 to the locomotive miles we developed the total cost for the maintenance of equipment proportion applicable to trains switching in the third [fol. 204] column. Then, after having obtained the direct expense, we add to it 10.82 & as developed on page 14 to cover the direct proportion of maintenance of equipment expenses and we further add 4.85% of $113, as developed on page 14 to cover the proportion of the general expense applicable to maintenance of equipment. I add the indirect expense first before taking the proportion for general expense (St. 46). The indirect expense is applicable to maintenance of equipment expense. General expenses are applicable to the total maintenance of equipment again including both the direct and indirect. Therefore, it is proper to add the 4.85 to $113.00 rather than the $102.00. Now, under transportation expense the direct accounts are applied for

train and locomotive, water for train, locomotive lubricant and other supplies and engine house expense—train—and there we again use the 206 locomotive miles times the unit cost per locomotive mile, which produces a total direct cost of $140.00 for locomotive operation in through freight trains and the same information being shown for local freight trains and mixed trains of freight proportion. Following item 4 we show the wages of train engine men and motor men and wages of train men who were employed on these trains during the seven day test period. Those were actual wages taken from time slips, and, in this connection, it will be noted that I changed from locomotive miles to train hours as a unit, because that is more appropriate when you are considering wages and, on that basis, I developed the wage cost for through freight trains, local trains and mixed trains. Now, the total direct expenses as shown in item 6 are increased by 23.70% as the indirect proportion of transportation expense or a total of $473.00 to which we add the proportion of general expense of 5.40, making the total for transportation expense of $499.00. Now, the grand total of train switching expense is the sum of item 2 and item 7 of (St. 47) $618.00 and on item 9 we show the total gross switch loads and empties of these trains during the seven day test period and on item 10 [fol. 205] we develop the train switching cost per car which, for through freight trains, was 78.7¢, local freight trains 90.4¢ and mixed trains freight proportion 86.3¢.

Page 12 still is dealing with road train operation but eliminates the train switching feature and this is also separated between through freight trains, local freight trains and mixed trains freight proportion. Page 13 relates to switching only. Page 12 has excluded the train switching cost. Now, under maintenance of way and structures, we have used a gross ton mile base because I think that reflects the use of your trackage and other maintenance of way appurtenances better than any other figure you might use and this also has been separated between the three classes of trains. The maintenance of way and structures, item 1, includes the indirect proportion to which I add 4.85 as shown on page 14, to reflect the proportion of general expense applicable to maintenance of way (St. 48). In Item 2 I show the total maintenance of way expense applicable to the test period for road freight train service. In item 3 we deal with maintenance of equipment, exclud-

ing train switching, of course, and there are the same three direct accounts, repairs, depreciation and retirement. That is a three-year average based on the locomotive miles during the seven days period multiplied by the average unit cost based on the three years and adding 10.82% to the total direct expense produces the cost shown in the item marked "Total" following the item "add indirect proportion". Plaintiff's counsel asks if I used the three-year average in all these things. Wherever I have used the three year average for direct cost. I have used the same period of time for the indirect, and also for the general expense. Now, in transportation expense I am considering the same direct cost which I did under switching expense on page 13 and the same number of locomotives miles is used for the maintenance of equipment accounts and the wages of train and engine men are the same or are as reported from the time slips for this seven day period. This is a special study. You ask if all these other trans- [fol. 206] portation expenses and maintenance (St. 49) of equipment expenses are all amounts reported for the year in State operation. The wages of train men were shown direct for this period and cost per locomotive mile as shown in group 5 and were based on information concurrently kept in the general office. Coming to line 8, we have the total transportation expense including a proportion of direct and a proportion in general. The grand total of those items is shown on line 9 and we then bring down from item 1 to line 10 the gross ton miles shown and produce the average cost per hundred gross ton miles shown on line 11, that will be used later in the study (St. 50).

On page "12" and the other pages I have been explaining, the figures are based on a period of seven days in the month of November of 1933. The figures that were used in my preliminary cost study, covered by pages 16 to 27, were based upon a week in the month of June, 1934. You ask why we used different weeks for the two studies. I was requested to make a study for the G. N. of the cost of handling intrastate traffic to the middle of June, 1934, and of course, to get a true picture of yard switching costs it is necessary to make a current study, and that was the reason that we made the study in June of 1934 for yard switching costs. There is nothing in the company's current records from which you can make such a terminal cost

study as I made in the month of June, 1934. You must get a field picture of terminal operations in order to get the true costs. That is not true of road haul costs, because we had sufficient records, such as conductors' train reports and other information from which we could develop the (St. 51) data shown on pages 12 and 13 of this study. The conductors' train reports to which I referred in making this part of my study are in the courtroom.

The next page number 11, relates to revenues earned within the state of Washington during the entire year 1933. Page 11 separates these gross operating revenues between [fol. 207] intrastate and interstate traffic, and also between the amounts apportioned to freight and passenger respectively. I think the exhibit is self-explanatory, and I shall not go any further. In certain items I have apportioned the entire revenue to freight or the entire revenue to passenger service, and others where I have divided the account as between freight and passenger (St. 52). Plaintiff's counsel asks me to explain how I did this. From account 101 to probably 133 inclusive, the annual report indicates clearly as to whether the items would be applicable to freight or passenger. From account 138 to and including account 152, it is difficult to get a correct proportion of the assignment to freight and passenger. In other words, it would be necessary to go over thousands of items of bills, and so forth, to determine that. So those accounts from 138 to 152, inclusive, are apportioned between freight and pasenger on the basis of the relationship of the direct allocations to freight and passenger in the account preceding the ones named.

Page 10 of the exhibit relates to the assignment to intrastate traffic of a proportion of the cost of reproduction new, less depreciation, as of I. C. C. valuation date, June 30, 1915, plus additions and betterments to December 31, 1933, to roadway property and equipment in the State of Washington. This exhibit indicates that of $122,038;008, $39,564,102 are applicable to intrastate traffic. This figure, as the statement indicates, was obtained by finding the relationship of intrastate operating expenses to total operating expenses in the state for the year 1933.

On page 9 I have developed the intrastate operating expenses applicable to certain revenue accounts other than the freight account, 101, as shown on page 11 just de-

scribed. In other words, the joint facility rent (St. 53) income and joint facility rents were obtained on the basis of the relationship of intrastate operating expenses to the total expenses within the state for the year 1933. And it will be noted under the heading Operating Expenses intrastate I have shown the expenses applicable to account 101, [fol. 208] freight revenue, shown on page 2, which I will explain later, and also the expenses applicable to revenues other than account 101. And the passenger proportion of operating expenses is also shown. Item 5 relates to Washington State Taxes applicable to intrastate business, and that computation was based on the relationship of Washington intrastate revenues to the gross operating revenues intrastate and interstate in Washington for the year 1933. In other words, "Item C" indicates a percentage of 15.38 as applicable to intrastate, from which I have developed the taxes shown in Item "F". The $77,627 in item 4, Account 508, page 9, is the rent the G. N. received from other railroad companies using its facilities in the state of Washington. In that amount was included $12,556 of taxes that had (St. 54) been paid on those facilities by the G. N. that was reimbursed to the G. N. by those tenants. So I deducted that amount in determining the net credit. In reaching the figure of $1,238,385 shown as Washington taxes in item 5 (b), I first deducted that figure under Account 508 of $12,556 taxes that were reimbursed to us by other companies. The $1,238,385 shown in item 5 (b) is the net amount of taxes that were borne by the G. N. on its properties in the state of Washington. I did not include in the $1,238,385, the taxes we were required to pay on property covered by the joint facilities, where we were the lessee. We treated those as rentals. Under account 541, at the top of the page you will find $859,089. That includes both taxes and rental (St. 55). This $859,089 was the total price we paid those other companies in interest on their investment and in reimbursements of taxes they had originally paid for the privilege of using their tracks in this state during the year 1933. The taxes included in that amount were $256,406. I have apportioned Washington State Taxes on the basis of intrastate and interstate revenues in Washington. I have allowed Washington a mileage prorate of interstate revenues in making this apportionment (St. 56).

[fol. 209] (The witness was then asked to state the reasons why he thought such mileage prorate of interstate revenues was proper. Plaintiff's counsel objected on the ground that the witness was not shown to be qualified to pass upon that question. The objection was overruled (St. 57). The witness then testified:)

I have given some thought to the matter, and in view of the fact that this is rather an important question I have prepared a memorandum which I shall read into the record, if satisfactory. I have several reasons why I think that the present method of apportionment is correct.

First. It is the method long prescribed by the D. P. W.

Second. It is the method used in all other states through which the G. N. operates.

Third. While other methods have been suggested, none have ever been agreed upon, and the I. C. C., after holding extended hearings, failed to make any decision.

Fourth. Any different method would have to be agreed upon by all the states and the I. C. C., and no such agreement is obtainable, as demonstrated by the proceedings before the I. C. C. in various cases. And I might cite as an example the case in connection with I. C. C. Docket 17,000, part 7.

Fifth. The argument that Washington's mileage proportion of interstate revenue should be augmented rests upon the contention that expense disproportionate to mileage is incurred at the Coast Terminals. Offsetting this, however, is the fact that operating expense disproportionate to mileage is incurred in other states. Examples of those are:

(a) Mountain operation in Montana, a condition which has been alleviated in Washington by the Cascade Tunnel, which very much reduces the operating expense formerly incurred in this state.

(b) Extremely cold weather on the central and eastern part of our line, which reduces both mechanical and personal efficiency.

[fol. 210] (c) Treating of water for locomotives on the plains, no similar expense being required in Washington.

(d) The fact that other states do not handle bridge traffic alone, but also have their own local expenses of originating and terminating traffic. Mr. Lonergan testified the other day that the Northern Pacific in North Dakota has as much originating traffic as through traffic. The same condition to at least an equal extent should obtain on the G. N., as we have practically the same amount of branch mileage in North Dakota as that of the N. P.

Sixth. The assumption that a mileage prorate of revenue fails to recognize the value of the traffic contributed by the Coast Terminals rests upon a misconception of facts. The following (St. 58) figures derived from the 1933 annual report to the Department of Public Works demonstrates that the Great Northern's interstate bridge traffic in Washington is practically equal to the interstate traffic that originates or terminates in this state.

I now quote figures from our 1933 annual report to the D. P. W.

Revenue tons:

Originated in Washington	2,307,988
Terminated in Washington	1,891,431
Or a total of	4,199,419

From which we deduct the intrastate tonnage also shown in the annual report in order to avoid the tabulation of the intrastate traffic both originating and terminating in the state (St. 59). From that we deduct the intrastate tonnage of 1,564,758 because we want to avoid the duplication of that figure, and we have a total of originated and terminated tonnage of 2,634,661 tons (St. 60). The total tons handled in Washington as shown by our annual report to the D. P. W. are 3,562,159. Deducting from that figure the amount of 2,634,661 tons as originated or terminated, leaves 927,498 tons of bridge traffic passing through Washington. Now, the total interstate tons would be 1,997,401, subtract-
[fol. 211] ing the bridge traffic, interstate bridge traffic.

The annual report shows that 1,997,401 tons were handled in interstate traffic and deducting from that figure the bridge traffic, interstate bridge traffic, amounting to 927,

498 tons, leaves a total of 1,069,903 tons of interstate traffic originated or terminated. Thus, the G. N. is shown to have 927,498 tons of interstate traffic which receives no terminal handling in the State of Washington. This condition has, to a considerable degree, resulted from (St. 61) the G. N.'s California extension, which has made the G. N. a through carrier as well as an originating and delivering carrier of interstate traffic in Washington. The contract by which the G. N. is permitted to handle its California and Portland business over the S. P. & S. for bids either taking on or putting off any traffic between Vancouver, Washington and Spokane. Hence, all this traffic is bridge traffic. The total amount of bridge traffic—927,498 tons—is almost equal to the total interstate traffic originated or terminated —1,069,903 tons. Thus, as against every ton which incurs a terminal handling in Washington, there is a corresponding ton whose terminal handling is entirely in other states. It would, therefore, be necessary to apportion as much revenue from other states to Washington as would be apportioned from Washington to other states if the mileage proration were to be modified by the arguments concerning terminal handling.

Seven. The mileage and I. C. C. value of the terminals of the G. N. in the Twin Cities and at the head of the lakes which the G. N. is permitted to handle its California and (designated as "Eastern Terminals") and in Seattle, Tacoma and Spokane (designated as "Western Terminals") are as follows: Eastern Terminals, the G. N. mileage is 384. Value 54,931.

Western (St. 62) Terminals 116 miles, value $23,547. Thus, reflecting a percentage of western terminals to eastern terminals in miles, 30.21% and in value 42.86%. There- [fol. 212] fore, on the assumption that operating expense is increased in proportion to the extent and value of terminals and that revenues should be allocated to states in the same proportion, there would be more revenue to assign from Washington to Minnesota than there would be from Minnesota to Washington on a car from the coast terminals to the Twin Cities terminals or vice versa.

Proceeding with my explanation of Exhibit "11", I next ascertain, on page 8, the cost of equipment rentals applicable to intrastate traffic. I have based this information upon the relativity of the intrastate car miles in Washing-

ton to the total car miles in the state of Washington, which reflected 20.20%, which applied to the net debits to freight car hire produces an amount assignable to intrastate traffic of $28,571, and to justify this figure, I have made an analysis of our intrastate cars handled during the seven day test period, which amounted to 1321 cars of which 291 were foreign line cars, or 22%. That is not in the study but I am giving you this information (St. 63). This 22% is higher than the 20.20% I have used in the study. In other words, there is an apparent understatement of this cost of freight car hire as assigned to intrastate business of $2,546. You ask as to any special items of service of the G. N. intrastate in Washington, very largely conducted in foreign cars. I would say that practically all of our petroleum and gasoline traffic is handled in foreign tank cars. The depot of the large oil companies for the distribution of their petroleum product in the state of Washington are situated on the G. N. line between Seattle and Everett (St. 64). And from the storage tanks at those places tank cars are filled for movement to various places in Washington. I don't think the G. N. owns any of those tank cars. I think they are all foreign line cars. You ask if that is a heavy volume of business. It is quite heavy with the G. N. because oil is used a considerable extent in the state of Washington, I understand. The G. N. pays rental for the use of those cars. I think the rental is on a mileage basis—so much [fol. 213] a car mile.

Referring to page 8, passenger car rentals have been determined on the basis of relationship of passenger car miles in the state of Washington to the system which produces a percentage of 17.58 and I next ascertained that on the passenger car miles in Washington 30.89% were intrastate—well, that is not right—I next ascertained that the revenue passengers carried one mile were 30.89% intrastate which developed the cost per passenger car rental applicable to intrastate passenger traffic of $3,088 (St. 65). That includes Pullman cars. We pay a rental for Pullman sleeping cars. I think that would be the biggest factor in that item.

Referring to page 7, I now develop an expense applicable to the freight proportion of revenues as shown on page 11 other than the revenues allocated for account 101, freight revenue, and I do this by determining the operating ratio

applicable to account 101, which amounts to 51.33%. This operating revenues—applying this operating ratio of 51.33% to the operating revenues freight proportion other than account 101, produces an operating expense of $79,239 applicable to revenue accounts other than number 101 freight. Item 2 refers to the passenger proportion of operating expense intrastate. I develop this cost by using the passenger proportion of operating revenues intrastate and interstate in the state of Washington as shown on page 11 and, by using the passenger proportion of operating expense in interstate and intrastate, as reported in the annual report to the D. P. W. for the year 1933. This produces an operating ratio of 161.09. I take a one year average expense items on that. I then applied this operating ratio to the intrastate (St. 66) operating revenues passenger proportion as shown on page 11 which produced an operating expense applicable to intrastate passenger business of $888,967.

Page 6 shows the development of various averages and [fol. 214] other factors which I will later use in equating various costs in my seven day study to an annual base and I think the study on this page is self-explanatory and can be applied later when I apply it to other pages of my study in raising these costs to a year's business. It will be noted, however, that, under the item of line haul, train switching, item 9, I have developed a cost per one thousand revenue net ton miles, which I will use later in determining this train switching cost at terminals where yard switching service is maintained. I have related that cost to 1,000 revenue net ton miles which will be used in equating to a year's cost (St. 67).

The information shown on page 5 shows the cost of station service including wages of station employees and station supplies, and so forth, chargeable to intrastate traffic, and it shows that for the year 1933 the amount chargeable to intrastate business was $246,950. Under item "3-B" it will be noted that I use the tons of interstate freight amounting to 1,997,401, and the tons of intrastate freight multiplied by 2 in order to give it the same weight as interstate. In other words, assuming that it would only get one handling within the state. That amounted to 3,129,516, or a total of 5,126,917 tons, if all the tonnage would be assumed as interstate and dividing that amount into the amount

shown in item "3-B", $404,564, produces, as shown in item "D", a cost per ton of 7.9 cents. In order to determine the cost per ton for intrastate freight we therefore multiply the 7.9 by two, which produced a cost per ton for (St. 68) intrastate freight of approximately 15.8¢, which applied to the 1,564,758 tons would produce the cost of $246,950.

In preparing this statement I estimated that all of the intrastate would receive one handling. But, as I testified this morning, approximately 927,498 tons would be bridge traffic. Consequently, insofar as the station expense is con- [fol. 215] cerned there would be no cost applicable to this traffic within the state of Washington, and if on this basis I should revise this statement I would have only 1,069,903 tons of interstate traffic, which would receive station service. What I did was to apply a multiple of two to the average cost of station service in order to take account of the fact that each intrastate shipment both begins and ends in the state, while I assumed that each interstate shipment would either begin or end in the state, but not both. And my suggestion is that on the basis of my showing that the G. N. handles practically as much interstate bridge traffic in Washington as interstate traffic that either originates or terminates here, it might have been proper to have a multiple of four instead of two.

Deducting the bridge traffic as stated, I have a net amount of 1,069,903 tons (St. 69). I am quoting this from a supplemental sheet I have here, an additional sheet. Now referring again to the intrastate tons of 1,564,758, in that figure we included 728,968 tons of logs, which leaves a net figure of 835,790, which would receive two terminal handlings or 1,671,580 tons. This is also on a supplemental sheet. It would be 1,671,580 tons, if stated on an interstate basis. Now in my original study I have given logs two station expense costs, but in this calculation I have allowed for only one handling, which would produce 728,968 tons. The total of these three items on an interstate basis produces 3,470,451 tons, or at the rate of 11.7 cents per ton, which multiplied by two, to give the effect of two terminal handlings for intrastate traffic, produces a cost per ton of 23.4 cents. Multiplying the traffic, other than the logs, the intrastate traffic other than logs, 835,790 tons by 23.4 cents produces $195,575 applicable to station expense. And logs

728,968 tons at 11.7 cents a ton for one handling only produces $85,289. Added to $195,575 produces a total of $280,864 as applicable to station handling for intrastate (St. 70) [fol. 216] traffic, which compared with the $246,950, shown in item "3-F", page 5, shows that we have understated this cost by $33,914. Item 5 on page 5 shows the method of equating the yard switching expense at our major terminals to a year's basis, and as shown on page 6, item "10B" the switching cost per one thousand revenue net ton miles was approximately $1.46. The intrastate revenue net ton miles for the year 1933 as shown in our annual report to the Department of Public Works was 138,265,617, which applied to the cost of $1.46 per one thousand revenue net ton miles produces a switching cost applicable to the year 1933 for intrastate traffic of $202,256.

Turning next to page 4 of the exhibit I have developed the cost of freight car repairs, depreciation and retirements applicable to intrastate traffic, based on figures contained in the annual report to the D. P. W. for the three years ended December 31, 1933, I determined the cost per car mile including both the loaded and empty car miles for freight car repairs, depreciation and retirements of approximately 1.8 cents. That is based on the loaded and empty car miles contained in our annual report reduced to a revenue basis, divided into the amounts reported for freight car repairs, depreciation and retirements. I have not computed that anywhere in my exhibit. I have no work sheets. There is nowhere an exhibit (St. 71) where you will find that. Referring to item "1-C", which refers to page 6, item 5, we find that for every one hundred revenue net tons miles we had 5.4976 loaded and empty freight car miles which, applied to the intrastate revenue net ton miles for the year 1933 produced the car miles shown in item "E", loaded and empty, which multiplied by the cost of 1.8 cents per car mile produces a figure of $133,061 for freight car repairs, depreciation and retirements chargeable to intrastate traffic for 1933.

Item 2 relates to train supplies and expenses, and again taking my figures from the annual report to the D. P. W. in 1933, I find that the cost per loaded and empty car miles [fol. 217] is approximately 52.5 cents, which multiplied by the car miles shown in item "1-E" on page 4 produces the cost of $39,895 chargeable to intrastate traffic for the year 1933.

On page 3 I am restating the seven day period costs to a year's basis, and I think the figures are self-explanatory, because they all relate to previous pages referred to in the exhibits.

And item 6 shows that for line haul costs, exclusive of train switching for intrastate traffic, the cost was $555,371. The line haul train switching expense shows in item 9 that for the year 1933 intrastate traffic should be charged with $89,763.

On page (St. 72) 2 I have a recapitulation of all costs which are strictly comparable with freight revenue, account 101. In other words, I have included on this statement the line haul costs of line haul train costs exclusive of train switching or train switching costs, freight car repairs, depreciation and retirements, train supplies and expenses, wages of station employees and station supplies and so forth, traffic expense and yard switching expense, and as shown item 8, this amounted to $1,334,268, all of which is applicable to intrastate traffic.

On page 1-A I have shown the relationship of intrastate and interstate revenue net ton miles for the month of November, the seven day test period and the year 1933. And the statement indicates very clearly that for both the month of November and the seven day test period that the periods used for the study were relatively heavy as compared with other months of the year, and therefore the costs used in my study would have a tendency to be understated. (St. 73.)

Page 1 and the final page of this section of my exhibit shows the gross operating revenues brought forward from page 11. The operating expense brought forward from pages 2 and 7. The railway tax paid as shown on page 9. The joint facilities rent, equipment rent as shown on pages 8 and 9 and the net railway operating income as shown in item 9, which amounted to $202,458. In item 10 [fol. 218] I have shown the cost of reproduction new less depreciation as of I. C. C. valuation date June 30th, 1915, plus additions and betterments to December 31st, 1933, of roadways property and equipment in Washington intrastate proportioned as shown on page 10, amounting to $39,564,102. Item 11 shows that the annual rate of return earned upon this reproduction cost less depreciation was 61/100ths of 1%. Item 12 shows the interest on the repro-

duction cost at 5¾% per annum to be $2,274,936 and item 13 shows that the Washington intrastate traffic for the year 1933 failed to earn a return of 5¾% per annum on the reproduction cost of $2,072,478.00.

The next section of my exhibit covers pages "A" to "F" inclusive, and relates (St. 74) to the results of our intrastate operations in Washington if the cost study were based upon intrastate revenue reported to D. P. W. after the elimination of revenues received from interstate and foreign commerce as reported in amended answers to interrogatories.

On page "F" I show the reproduction cost of property less depreciation in the state of Washington applicable to intrastate traffic, which amounts to $29,733,312, as compared with $39,564,102 shown on page 1.

Turning to page "E", I developed a cost applicable to intrastate traffic for the joint facility rent, income and joint facility rents which, in the case of the G. N., amounted to a net debit and is shown in item 7-e. This amounted to $93,119, the freight proportion, as compared with $158,024 shown in item 4-g of page 9 of exhibit 11. The passenger proportion chargeable to the joint facilities account net debit as shown in item 7-j of page e amounted to $100,336 as compared with $99,403 (St. 75) as shown on page 9 of exhibit 11. The total of the freight and passenger proportions as shown by item 8, amounting to $193,455.

Page "D" relates to the equipment rentals chargeable to [fol. 219] intrastate traffic and shows that, for the higher freight cars, intrastate traffic should be charged with $16,825 as compared with $28,571 shown in item 3-a, page 8 of this exhibit and the passenger proportion $3,141 as compared with $3,088 shown by item 3-b on page 8, making a total as shown by item 6 of page "D" of $19,966.

Page "C" relates to operating expense chargeable to intrastate traffic and shows by item 3 that the operating expense would amount to $1,730,361, as compared with $2,302,474 shown on page 1 of the exhibit. Railway tax accruals following the same percentage of 15.38%, which is the percentage of Washington intrastate taxes based on gross operating revenues applicable to the intrastate business shown by item 4-c, amounted to $335,247, as compared with $516,489 shown on page 1 of the exhibit. In it we have transferred certain freight from intrastate to interstate

traffic. You ask if I only changed item 101. 101, and in account 143 there was an item of $25,000 (St. 76) for wharfage which was transferred. That was in account 143, Miscellaneous. And in account 110 there was a small charge transferred from intrastate to interstate. I don't have that amount now. It was a small item. This page shows the freight revenue restated to be $1,622,644. Passenger revenue $557,116, total revenue $2,179,760. The figure is taken from the report to the D. P. W. (St. 77), schedule 710, page 700.

Page "A" is a recapitulation of the pages B to F inclusive and shows that the gross operating revenues amounted to $2,179,760 or operating expense, $1,730,361. The final results shown by this portion of my exhibit amount to a net railway operating deficit as shown by item 9 of $99,269 and item 11, of course, would be a deficit rather than a rate of return earned and item 13 shows that we fell short by $1,808,934 of earning a return of 5¾% per annum on the cost of reproduction new less depreciation of property and equipment in Washington assignable to intrastate traffic.

By way of general explanation, pages 1 to 27, inclusive, [fol. 220] of Exhibit "11" are based upon the division of revenues between interstate and local business as reported to the D. P. W. for 1933 (St. 78). While pages "A" to "F", inclusive, are an adjustment of the first set of figures to the division of the business between local and interstate as reported in the G. N.'s amended answers to the interrogatories in this case.

You ask me whether, prior to this case, an exact and precise classification of the business as between interstate and local has ever been a matter of importance. No, sir, this is the first time in the history of the G. N., I think, that this question has arisen. Since the annual report was filed, there has been an analysis and recheck of the business for the purpose of classifying it correctly. The result of that analysis and recheck was reported to this court in the amended answers to the interrogatories.

(The witness indicates bundle in which the switch cards used as the basis of his terminal study are contained.) (St. 79.)

Def.'s Ex. "12" is the card used by the switch foremen in their terminal except the Seattle Inter-Bay terminal.

Def.'s Ex. "13" was the card used in the study at our Seattle Inter-Bay terminal. Def.'s Identification "14" contains a complete record of all switch movements made by each switching crew during the seven days ended June 15th, 1934, at each of our major terminals in Washington, prepared on the forms as identified exhibits number 12 and 13. There were approximately 240 men engaged in these studies (St. 80).

I have heard the testimony of Mr. Percival, and his general description of the services that interstate and intrastate cars would receive both at the points of origin and destination, and at these intermediate classification yards, sometimes called terminals. You ask if in my cost study, [fol. 221] wherever a car, whether interstate or intrastate, has received one of these intermediate classifications, I have applied the cost of that work to that car. I might explain the study in this way: When the foreman secured a card for their work for the seven days, they included all cars switched both interstate and intrastate. For instance, they might classify fifty cars, 25 of which were interstate and 25 intrastate, there would be one charge assigned to that movement, and then when I made the—applied the cost to only intrastate cars the result would be—the method of doing that would be to apply this average cost to an intrastate car. In other words, after getting this information from the switch foreman I merely applied the cost to intrastate cars (St. 118). The remainder of the costs of that service in general are in the G. N.'s account as applied to the interstate cars. In addition, when a car, whether interstate or intrastate, receives a terminal service at the point of origin or destination, I have similarly applied the cost of that work to that car. The valuation of the cost to that movement would be applied in the same manner as I described for classification. My study related specifically to bring out the cost of handling the intrastate business, and to do so I had to set the cost of switching of traffic. It was intermingled in the yards. A switch engine does not handle intrastate traffic in one movement and interstate traffic in another. And the remainder of the expense that was incurred within the state of Washington on interstate cars would be in the general expense of the G. N. in the state of Washington (St. 119).

There were approximately 60 employees engaged in the terminal cost study. In preparing Exhibit "11" it was also necessary to use the conductors' reports for the week ended November 21, 1933. You ask what use I made of the conductors' reports contained in the bundle marked Def.'s Ex. "15". The data shown on each train conduc- [fol. 222] tor's report was tabulated onto a large sheet, which showed the date of the train run, that is the date the train started its movement, the engine number and the train number when it was assigned a number, or if it was an extra train it was so indicated, and the name of the conductor. In addition to that it showed the number of locomotive miles in both road service and in train switching service—that is, the principal locomotive miles, the helper locomotive miles, the loaded car miles separated between intrastate and interstate, the gross ton miles separated in the same manner, the net ton miles—revenue net ton miles also separated as between interstate and intrastate. And these reports also were sent—or copies of these reports were sent to the division superintendent's office on which he noted the wages for the particular (St. 120) train runs or wages of engine men and train men, in order that there be no mistake as to what particular trains we wanted the information upon. And after tabulating each conductors' report, each and every one for the seven days, they were recapitulated as to the units that I have just mentioned. The recapitulations are shown on the sheets contained in the bundle marked Def.'s Ex. "16" for Identification. You ask if the three bunrdles marked respectively Def.'s Exs. for identification "14", "15" and "16" contain the basic data to which I referred in making my study, Exhibit "11", other than the information I obtained from the company's general books and records or from its report to the D. P. W. Yes, sir, these bundles, of course, Exhibits number "15" and "16" refer to the train portion of the study, and Exhibit No. "14" refers to the yard portion.

(Def.'s Ex. "11" was thereupon received in evidence with the understanding that plaintiff's counsel might save his objections thereto by moving against the same after the cross-examination of the witness. (St. 121-2.)

(Def.'s Exs. "12" and "13" were thereupon received in evidence over plaintiff's objection that the same were im-

[fol. 223] material. St. 122. The witness then continued:)

I made a study to determine the estimated annual reduction that would occur in the G. N.'s net railway operating income in Washington if the transportation of intrastate traffic were to be discontinued. It was during the year '32. I think from about March on through until June or July. It took that long to get the study completed. The basic data was obtained in March, 1932. The result of my study is contained in Def.'s Ex. "17", consisting of sheets 1 to 13 inclusive (St. 123).

(The testimony of the witness with respect to this exhibit is omitted, inasmuch as the facts sought to be established thereby are not disputed. St. 124-127.)

Def.'s Ex. "18" contains the conductors' train reports for the week ending March 9, 1932, and Def.'s Ex. "19" contains the recap of the conductors' reports for the same week (St. 128).

(Def.'s Ex. "17" was thereupon received in evidence. St. 128.)

(The witness was then asked if he was acquainted with the G. N.'s relative volume of traffic in the years 1932 and 1933, to which he replied that he had the annual reports there. Plaintiff's counsel thereupon objected to the witness answering unless the reports were put in evidence. St. 129. The objection was overruled. St. 131. Whereupon the witness testified as follows:)

In Washington the revenue net ton miles for the year 1932 were approximately 522,337,000. In 1933 they were approximately 598,601,000, or an increase of about 13%. Based upon the result of my study of the traffic in 1932 and the volume of G. N. traffic in 1933, you ask me what I say as to the saving the G. N. could have made from withdrawing from its intrastate traffic in Washington on January 1, 1933 (St. 131). I think the relative saving would be about the same for the year 1933 as it was in 1932. That is to say, the saving would have amounted to something like 14% of the revenue lost.

On page 401 of the annual report of the D. P. W. for the [fol. 224] year 1933 is shown a total of 8,361 miles of road

operated for the G. N., of which 1,171 miles are in the state of Washington, or approximately 14% (St. 132).

On cross-examination he further testified as follows:

I do not supervise the making of the G. N.'s annual reports to the D. P. W. of this and other states, but I have access to all the reports and records of the G. N. Those reports are under the supervision of our comptroller, who is the head of our department. You ask who determines whether a given operation is interstate and which is intrastate in making out these reports. Oh, there is possibly fifteen or twenty people that would be involved in all of the revenues shown there. For instance, the accounting department is divided into various other sections. One department handles the freight revenue, another department the passenger revenue and still other departments handle various other accounts shown in the annual report, so it is hard to say just who would have charge of all of those revenues. As I say, there would be more than one person involved. You ask who would determine, from the standpoint of the company in making these reports, whether a given shipment in the state of Washington originating in the state of Washington was or was not intrastate business. For example, account 101, freight revenue, our auditor (St. 145) of freight receipts would be the one to decide from weigh bill inspection as to whether a shipment is intra or interstate, so far as freight revenue is concerned. That has been true for a number of years.

You ask if we transferred to the interstate account, the kinds of shipments which were reported in our 1933 report to the D. P. W. as intrastate business. I did, for the purposes of this exhibit only. You ask when I made this change and who instructed me to do it. I made the change since coming to the west coast under the directions of our attorney, that is as far as the exhibit is concerned now. [fol. 225] That is all I was interested in (St. 146). You ask how long ago that was. Well, within the last week, this particular portion of my exhibit was prepared, from pages A to F inclusive. They only mentioned this to me about a week ago. You ask if I was supposed to be the one that was making this study for the purposes of determining the earnings on intrastate business in this state. I

was furnished with all the information from which to make my deductions, that is as to what our results would be with the intrastate traffic. First I made the study in accordance with our annual report. I was instructed so to do by our legal department in Washington. I was requested last June to start the study based on our annual report to the D. P. W. and that was the main study from pages 1 to 27 inclusive. As a result of that I made the study contained in that portion of Def.'s Ex. "11", which is numbered "1", "2", and consecutive numbers. That was completed about a week ago (St. 147). When I got here, I submitted that study to counsel in Seattle, just as it was with the exception of pages "a" to "F" inclusive. You ask if it is true that after examining that study I had made, the G. N.'s counsel, for the first time, suggested that I hadn't put enough operating revenue over into the interstate side or that I had put too much operating revenue over into the intrastate side. Well, I don't think I was given that impression by our attorneys. My first study was based on the annual report submitted to the D. P. W. and, of course, I know that there are many questionable items in that report and as to whether they would be interstate or intrastate revenues and those are the items which were eliminated from the intrastate revenues in the preparation of pages A to F of the exhibit. I attended the meeting with the Tax Department during last June, I believe it was, and went over all these matters and I know there are quite a good many items that are not properly classifiable as intrastate revenues in our report to the D. P. W. (St. 148). For that reason I prepared pages A to F of the exhibit, to eliminate those. I did [fol. 226] that sometime within the last two weeks. You ask who it was told me what particular items should be switched over from the intrastate revenue items to the interstate revenue items. I did that under instructions of my attorneys. You ask if they told me which ones to switch over. Well, some of our other accountants from St. Paul prepared that information and it was given to me to make this particular portion of the study. You ask when that information was prepared. Well, I am not assigned to that particular portion of the work, so I cannot say just when that was prepared. You ask when I received it. I only received it within the last two weeks in Seattle, after I had submitted to counsel for the G. N. that portion of the ex-

hibit in which the pages are numbered numerically (St. 149). I have a copy of what I was instructed by the G. N. attorneys to deduct from the exhibit. Plff's Identification "20" is the data which I used or based my deductions on (St. 150). You ask if Identification "20" was all the data that was turned over to me for the preparation of the supplemental portion of Def.'s Ex. "11". Yes, this is all that was turned over to me. You ask if any of that data is contained in the report to the D. P. W. No, not as shown here. You ask if it is shown anywhere except as included in other items: With the exception of account 110 and 143, all that revenue is included under revenue account 101, freight. They are included in lump sums in the annual report. You ask if they are included in larger sums than the amount stated in Identification "20". Yes, this is a part of the amount shown. You ask if they are shown in our books in St. Paul. Yes, they would be in our St. Paul records. You ask if there is anything in our books at St. Paul to indicate the interstate nature of these particular items (St. 151). I think the weigh bills would be the best indication as to whether they are interstate or intrastate. You ask if a way bill of a shipment of apples from Wenatchee to Seattle would indicate whether or not it was going beyond Seattle. It is my understanding that a weigh bill of that nature generally indicates pretty clearly whether the shipment is destined for export or not. I never saw one of them, I am just [fol. 227] quoting from hearsay. You ask if I ever saw any of the weigh bills identified in any of the so-called shipments for export referred to in exhibit 20. No, sir, my work doesn't require me to examine weigh bills (St. 152).

(The foregoing testimony was taken on Tuesday, October 23, 1934. St. 68. At this point an adjournment was taken until Wednesday, October 24, 1934, at 9:30 A. M. St. 152. At the reconvening of court the witness continued:)

I might qualify my answer to your questions yesterday by stating that I had known for some time past, in fact since March of this year that there were many items of revenue which might properly be called interstate rather than intrastate, and while I had knowledge of the approximate amount I did not attempt to make an exhibit until I came to Seattle approximately three weeks ago to determine the accuracy of the figures which we wished to throw

into the interstate revenues from the intrastate. You ask me when I found out those amounts approximately. Through our accounting department. You ask if I examined the books of the company personally. No, I did not examine them personally, but I want to make this explanation that in the general office in the accounting department my work is more or less segregated from the work from the freight auditors and other persons concerned in making this segregation. In (St. 154) other words, I prepare cost studies based on data which comes to me, and of course this revenue feature would only come to me in total. I would not look at the books to verify it in any way. You ask if it is a fact that I did not do that with any part of my exhibit; that I did not look at the books at all. No, if I had to do that this study would not be ready for maybe another six months. You ask if it is not a fact that the company's books show these various items that have been transferred from the intrastate to interstate, to be in fact intrastate. I don't know whether they do or not. I have taken these revenues as they came to me, and I would rather have the [fol. 228] next witness explain that feature of it. It is true that these revenues have been included as intrastate for a long period of years in the G. N. reports to the D. P. W. (St. 155). The separation heretofore has been in more or less of an arbitrary manner, because it was not really vital as to whether some of these revenues would be intrastate or interstate and—well, to be frank, when this tax question arose, I think it was only to the advantage of the company to then go into this segregation in more detail and determine just what was strictly intrastate revenue, and that is what we have done. The G. N. has had many rate cases in various states and before the I. C. C. (St. 156).

(The witness was then asked whether or not it was not a matter of importance in these other rate cases that the G. N. had in other years as to how the G. N. kept its accounts as between intrastate and interstate revenue. Defendant's counsel objected to the question unless it was limited to some case involving Washington rates. The objection was sustained. St. 160. Whereupon the witness continued:)

You ask if I know of my own knowledge anything about the actual fact of whether or not these movements are in-

trastate or interstate (St. 160). I think I will say I don't know. I have been furnished this statement and incorporated it in a cost study, and that is as far as I care to go with it (St. 161).

You ask whether in preparing Def.'s Ex. "17" I took the revenue divided as contained in the report to the D. P. W. or whether I took my modified showing with respect to the apportionment wherein I eliminated certain items as to interstate and transferred them to intrastate. The revenues were based on the report to the D. P. W. The saving exhibit was naturally based upon the revenues as reported to the D. P. W. That was the only logical thing to do when we were trying to consider what we would lose by eliminating intrastate traffic. It was perfectly proper to use them in the saving exhibit (St. 162). You ask which is right, [fol. 229] Exhibit "17" or Exhibit "11" (St. 163). They are both right for the information they are intended to show (St. 164).

You ask whether or not I believe that in a rate proceeding in Idaho involving the intrastate rate, I should use a mileage prorate (St. 165). In view of my statement yesterday, I don't think it is for me to say what should be done with the interstate revenues in Washington or any other state. As I stated in my testimony yesterday, a matter of that kind would have to be decided by state commissions and the I. C. C.

Idaho is practically a bridge state so far as the G. N. is concerned (St. 167). You ask if it would be proper to use a mileage prorate in a rate investigation affecting the amount of the intrastate rates in Idaho. Before answering that question I would like to make a study of the conditions in the state of Idaho as well (St. 167) as any other state through which the G. N. runs, to give an intelligent answer on that question. You ask if it is conceivable that more than a mileage prorate or less than a mileage prorate might properly be used in a study of this kind in any state. (Counsel for defendant answered for the witness that it was conceivable.) You ask why. Well, it could be conceivable if you investigated certain operating conditions in a state and found out that the state was not credited with its full share of interstate revenue, due to operat-

ing conditions which required more expense than in other states through which a road might operate. That is conceivable. You ask if the revenue from interstate shipments is not supposed to cover the relative costs in the different states (St. 168). Supposedly so, yes. The expenses in my study are localized to intrastate traffic as far as I can do so. And the expenses as reported to the D. P. W. as to interstate business are localized so far as possible. In this computation, revenue on interstate shipments is apportioned to Washington as to each individual shipment on a mileage prorate basis. The apportionment is from [fol. 230] station to station. That doesn't take into account the movements of the car in the terminals at all. Car mileage is not considered after the train reaches the terminal. In apportioning revenue on a shipment between Seattle and some point outside the state, the switching movement in Seattle is entirely ignored (St. 169).

In a shipment from Seattle to St. Paul, the cost of the terminal handling is all chargeable to Minnesota, and the state of Washington gets the full benefit of the mileage prorate of that shipment. In such a shipment Washington has a terminal handling. The middle states have their terminal costs, too, in that shipment. There is terminal handlings on a shipment moved from Seattle to St. Paul. All interstate must have terminal handlings (St. 172). You ask if I call those terminal handlings where they switch the car and make up new trains. Yes, that is all considered. You ask if I would consider the mileage prorate apportionment of interstate revenues proper if the G. N. road did not extend west of Spokane. Again we would have to investigate to find out just what the relative costs would be. I think it is difficult to give an offhand answer to a question like that. I have no opinion. You ask if I have made a study to determine whether the mileage prorate is proper as to the state of Washington as to individual shipments and the service rendered to each. No, I have never made a study to that effect. The study would have to be made not only for Washington, but for every state through which we operate. For want of a better method we have been using the method as reported in the D. P. W. (St. 173).

On page 700 of the G. N.'s report to the D. P. W. entitled "Railway Operating Revenue earned within the State," appears a footnote providing: "The figures en-

tered as 'revenues earned within the State on interstate traffic,' are compiled upon a straight mileage basis in accordance with order of the Railroad Commission and are given under protest for the reason that this Company claims that basis does not accurately reflect the revenues earned [fol. 231] within the state of Washington from such traffic.'' I am not responsible for that note being in the report and I wouldn't give my opinion as to whether or not it is correct.

(Defendant's counsel thereupon admitted that the G. N. is responsible for that note, and that a similar note had been contained in the annual reports, he supposed, for 20 years. St. 174. The witness then continued:)

Referring to Def.'s Ex. ''11'', page 9: The item under the head of Washington intrastate and interstate, account 541, Joint Facility rents, Debit, shows what we pay out in joint facility rents (St. 210). The item of $859,089 includes taxes. $256,406 in taxes are included in that amount. We paid taxes to the extent of $12,556 in the rents that we received for the use of our line. In computing our Washington state taxes, we have not added those taxes that we have to pay on the lines of other carriers of which we have the joint use. At item 5-B on page 9 I have shown only the taxes which were strictly paid by us. We did not include any taxes paid by us which we later billed to other lines. You ask if the taxes that we paid to other companies for the use of their lines plus the amount that we actually paid on our property constitute the actual taxes that we have to pay on operating property used by us. Yes, the amount that we pay to a foreign line would be tax applicable to our traffic, that is correct (St. 211). Item 5-B on page 9 indicates the taxes which were assessed and paid on our own operating property on an ad valorem basis, less what we billed to our tenant lines. We deducted the taxes which our tenant lines contributed, but did not add those we paid on other foreign lines (St. 212).

(Referring to the propriety of crediting as against the taxes paid by the N. P., the amount of such taxes paid by the companies having joint user rights over its lines, Mr. da Ponte made the following statement at this point:

''I am inclined to think you are right that we should credit those taxes. I thought so from the first, but Mr.

Peterson was doubtful about it, and we have done so. I [fol. 232] think you are correct in saying that those taxes should be deducted, the amount of taxes to be charged. We did that. As a matter of law, Mr. Peterson did not attempt to pass on it, but I did, and he did not make the exhibit in time because we did not have the time" (St. 214-5).

The net railway operating income of a railroad is the gross revenues less operating expenses, less taxes, plus or minus these joint facility and equipment rentals, whether it is a credit or debit, and that result is known as the net railway operating income. No deduction of interest on bonds is made in computing that net railway operating income. The net railway operating income reflects strictly what it is costing to operate the road. It does not go into the other fiscal data of the company. You ask if, in determining that, we add any credit item as to joint facility rents. Whichever way it may be. In the case of the G. N. it is usually a debit item. I believe in the case of the N. P. it is a credit item (St. 216). You ask if I consider that net railway operating income is the test as to whether we are making money or losing money in our operations in Washington. I think the net railway operating income is a fairly (St. 217) good measure of what a railroad is doing in the way of earning money or losing money in a state or on the system or in the United States, for that matter. You ask whether or not any charge for interest on capital stock invested or bond interest, or short term obligations or any other interest charge is made or credited in computation of net railway operating income. No. sir (St. 218). We have to pay the Pullman Company so much a mile, per car mile, for the use of their equipment, and they set a minimum charge a road should earn per car per annum. If the G. N., for instance, earns more than that minimum during a year we are paid something by the Pullman Company. But to my knowledge we have not received anything in return from the Pullman Company, owing to the poor passenger business. I cannot say whether, in Washington, we are making more or less than the minimum prescribed. I know that the system as a whole has not received anything from the [fol. 233] Pullman Company. I could not say from any figures in the report to the D. P. W. or from our books in St. Paul, whether or not the revenue from the Pullman Cars

we actually use in intrastate service in Washington reaches this minimum figure (St. 219).

The preponderance of our interstate shipments are made over our main lines. I would think that, proportionately between interstate and intrastate we do, a greater proportion would be interstate on the main lines. I think there would be a higher proportion of interstate on the main lines than on the branch lines. There is more interstate than intrastate traffic on the Portland-Seattle line (St. 221). That was shown by the seven day study. My study shows that the interstate net ton miles on the Portland-Seattle line for the seven day period were 1,096,184, and intrastate, 288,533, or a total of 1,384,717, or approximately 21% intrastate (St. 222). We did not apportion our joint facilities rents on that basis. Joint facility rents are apportioned on page 9 on the basis of operating expense. The seven day figures are the only ones we have on that. You ask if that is the principal line on which we pay joint facility rent. Yes, that represents the greater amount. I would say practically all of it (St. 223).

Referring to page 9, Def.'s Ex. "11": The total amount we paid out in joint facility rents was 859,000 plus, and the total amount we took in, excluding taxes, was 65,000 plus, and the net amount was 794,000 plus (St. 224). I then apportioned that between freight and passenger service intrastate and interstate on the basis of operating expense for the entire state. The freight proportion was 65% and the passenger proportion, 35%. You ask why I apportioned it on the basis of operating expense, and ask what relation that has to the operations on that particular line as between freight and passenger. It is a method customarily used for apportioning items of this nature. At the time I prepared this study I did not go into the question of how much [fol. 234] traffic was inter and how much intra on this particular line. I suppose our wheelage reports show the relative amount of passenger car miles and freight car miles on that particular line. You ask if that wouldn't show the relative use of the two kinds of services. Yes, I suppose it would. You ask if that would be the fairest way of determining this. Oh, it depends upon the point of view. I made the statement up on this base. I presume there are other methods, just a question of judgment as to which is correct (St. 225).

But I did apportion it according to the total amount of expense incident to passenger service in the state of Washington, as compared with the total amount of operating expense incident to freight service in the state of Washington (St. 226). You ask whether I can determine from relative expense incident to freight and expense incident to passenger service, whether a given piece of line is used exclusively for passenger service or exclusively for freight service or the proportion of each. In preparing this exhibit I merely—I used this method to secure some indication of how much of this joint facility rent debit should be assignable to intrastate and interstate traffic. It is, I think, some light on the matter and shows relatively how much we should apportion to intra and interstate. If you want to go into small sections of the line, why, I suppose there would be—well, it simply would be impossible to work out a cross study unless you studied each small section of the line (St. 228). We keep a record of our car miles on the Portland-Seattle line, and know how much the passenger car mileage and freight car mileage is.

You ask how I apportion the freight proportion to intrastate and interstate respectively. I relate that to the operating expense applicable to our intrastate freight revenues and intrastate passenger revenues as shown by item "4-F" of page "9". And the result is that I apportion approximately 30.6% or $158,124 of the operating expense to total intrastate freight expense. Whereas the relative use shown of relative net ton miles during the seven day [fol. 235] test period indicated that only 21% of the ton miles hauled over that line, revenue ton miles, was intrastate (St. 229). That seven day period indicated that. It might be greater over a period of time, I don't know. I then apportion 35% or $90,403 of the passenger proportion intra and interstate, to the intrastate alone. You ask how I arrived at that figure. On the same base I arrived at the freight, by using the relationship of the freight expense intrastate and the operating revenues intrastate. I assume that the relation between intrastate expense and intrastate revenues are the same as the relation between interstate expense and interstate revenues. I think item 4-H explains that. In other words, it says that the passenger proportion of intrastate operating expense amounting to $888,967 divided by the amount shown in item C, $2,481,135

of passenger proportion of operating expense, produces a percentage of 35.8 which, multiplied by the passenger item of operating expense in item 4-E, produces $99,403 (St. 230). All mail and express revenues are allocated to interstate according to our annual reports for 1933. I don't think it would have been a very difficult problem to determine the relative number of intrastate passenger miles hauled over that line during that week. I think it would take a special study. You say there might not have been any local revenue passengers hauled during 1933 over the Seattle-Portland line so far as anything I know is concerned. On the other hand, there might have been a great many. You ask what relation the factor I have used has to the number of passenger miles intrastate to the number of passenger miles interstate hauled over that line. It probably has some relation, I don't know (St. 231). You ask if it isn't a fact that I couldn't take the factor that I have used and determine the relative number of interstate passenger miles and intrastate passenger miles hauled over that line during this year 1933. Without investigating I don't know just how well that factor would represent the actual condi-[fol. 236] tions. You ask if the way to determine the relative amount of the rent apportionable as between intrastate passenger and interstate passenger would be to take the relative passenger miles hauled intrastate and interstate over that line. Yes, I think that would be a proper basis to determine the relative use (St. 232). I have apportioned a total of $257,000 to the Washington intrastate freight and passenger (St. 233).

Page "8", Ex. "11", is an attempt to apportion the debit balance of hire of freight cars. I know there was foreign cars handled during the November test period in intrastate traffic. I don't know how many were oil and how many other traffic. I don't know whether they were oil or what they contained. I don't know what the contents of the cars were. I don't know whether they were tank cars, or not (St. 233). I first apportion hire of freight cars on a relative car mileage basis between Washington and the system. And then as between intra and interstate I still apportion it on the basis of the car miles. I got the Washington intrastate freight car miles applicable to the year 1933 from page 4, Item "1-E". The total for the state is shown in the second item under the item the (St. 234) hire of freight

cars, thirty-seven million. That does not include cabooses. That is only loaded and empty freight cars. The Washington intrastate per car mile does not include cabooses. I apportion the passenger car rentals on a passenger mile car basis as between the system and Washington first. I then determine the Washington proportion on the basis of revenue passengers carried one mile. That is, the state of Washington is apportioned between interstate and intra on the basis of revenue passengers carried one mile, or .89 per cent intrastate. That includes passengers carried on trains that have no Pullman service at all. It reflects the relationship between all passenger miles regardless of what kind of cars they might be riding in. It is true that none of that expense should be apportioned to service where there was no Pullman cars used on the train at all. But [fol. 237] we have a substantial intrastate movement in our trains which contain Pullman cars, for (Tr. 235) instance between Seattle and Spokane and Seattle and Portland, and I think that would justify this basis. It is only where there is a deficit that we have to pay any rentals for Pullman car service (St. 236).

Page "7", Exhibit "11", I think, explains (St. 236) fully just how I arrived at that figure. You will notice under item 1-B on page 7 that I have shown total operating expense applicable to freight revenue, account 101, intrastate, as shown on page 2, $1,334,268, which I relate to total freight revenue, account 101, intrastate, as shown on page 11 of $2,599,331, which produces the operating ratio of 51.33 per cent. I then applied that operating ratio to the balance of intrastate revenues as shown on page 11. In other words I deduct from the total intrastate revenues the amount applicable to account 101 freight, which leaves $154,372, to which I have applied the operating ratio applicable to account 101, which assigns an expense of $79,239 to the revenues other than account 101. You ask how I distinguish the operating expenses set forth in item 1-B, account 101, from the operating expenses incident to the other freight revenue. The expenses which I have shown in item 1-B relate particularly to the cost of train operation, traffic expenses, and so on. I think my exhibit on page 2 will show what I considered (St. 237). The operating expenses which I considered directly applicable to freight revenue, account 101, that is, where you could definitely sah that they were

in connection with handling it. I will go back to page 7 again. By assigning the operating ratio of 51.33 per cent to operating revenues other than those included in account 101, I have taken care of the expense of handling the business which earned the $154,372 as shown on page 7. In other words, I have assumed the same operating ratio for all intrastate freight revenues as I did for the account 101 (St. 238). You ask if I didn't include all the possible op- [fol. 238] erating expenses in computing my expenses for the seven day period, in determining the cost per ton mile. All of the train costs I have included, but in addition to the train costs you have some other item. You ask what expenses I didn't include in making that seven day study. In the seven day study—referring to page 2, the item of traffic expenses would be one that I computed from the annual figures in the state report. You ask if the traffic expenses were not apportioned for the seven day period. No, there was no study made of traffic expenses for the seven day period. The traffic expense amounted to $66,972. I used the $1,334,000 (last figure on page 2) in connection with my operating ratio to start with (St. 239). You ask me why I had to add in this item "c" at all, and if all of my operating expenses have not been taken care of already in my seven day study. I have not taken care of any operating expenses applicable to the $154,372.

The item 1-A on page 7 shows $2,599,331 as freight revenue under account 101, which is brought forward from page 11 of my exhibit. The total freight revenue as shown in the first column on page 11, intrastate, is $2,753,703. Deducting the revenue under account 101 leaves $154,372 to which I still must assign some cost to handle that business (St. 240). Page 7 apparently is in error on that item 1-B. It should have been instead of $150,554, it should have been $154,372 times 51.33%, which would increase the amount $79,239.

After the seven day study has been computed to a year's basis, then all of the expense accounts under the I. C. C. classification have been included (St. 244). (Questions by Defendant's counsel) In my item 1-B, page 7, I have included only the proportion of freight operating expense which is applicable to the services that are represented by the revenue shown in line "A" on that page. I have not included all of the operating expenses that were incurred by

the railroad. I have not included all of the expenses that [fol. 239] were incurred by the railroad in all its freight business. The items that I have not included are those that are applicable to the services represented by the intrastate revenues that are shown in line "c". In other words, in addition to incurring a cost of $1,334,268 for handling the freight traffic (St. 245) under account 101, we also incurred an expense in handling the balance of our revenue as shown on page 11, the first column. In other words, it would be revenues accounts 101, 111 and 112 (St. 246). After developing an operating ratio for handling the revenues under account 101, the intrastate freight revenues, I found that there was an operating ratio of 51.33% developed, and I therefore assumed that in view of the fact that freight revenue, account 101, was approximately 90% of the total freight revenue, as shown on page 11, that the operating ratio of 51.33% would have to govern, because the item of account 101, freight revenue, must surely determine your operating ratio for the balance of the revenues (St. 247). In my item 1-B, page 7, of $1,334,268, I say I have considered only the expense incident to the traffic from which we received the revenues accounted for under account 101. You ask me if, in so doing, I haven't taken full account of my station employees' wages, for instance. I have taken full account of the expenses which were required to transport the freight which earned $2,599,000 of freight revenue. You ask if in doing so I haven't accounted for all of my wages already. Yes, but I still have other items of revenue here. You ask if it isn't a fact that if I have charged all of the expenses already, I shouldn't charge them again. I can't see that I have charged all of the expenses. I have only charged 90% of my expenses, approximately (St. 248). You ask where I get the 90%. Well, on the base of this figure here, that is 90% of the total freight revenue. That is, the intrastate revenue.

The information on page 4 is developed from the loaded [fol. 240] and empty freight car miles as shown in the annual report to the D. P. W. for the years 1931, '32 and '33 and the cost of freight car repairs, depreciation and retirements, accounts 314, 315 and 316. From the annual reports I determined for the three year period there were 116,320,584 loaded and empty car miles and, applying that to a figure, the percentage of 92.15%, (St. 249) as I explained

this morning, to state the freight car miles on a revenue base, produced 107,187,418 car miles. That is on account of the proportion of none-revenue. I have stated them on a revenue base in that manner. The total cost for the years '31, '32 and '33 of freight train cars depreciation and retirements was $1,614,842. That item was taken from the annual report and dividing 107,189,418 car miles into that amount of money produced the average cost per car mile as shown in item 1-A on page 4 to which I add the proportion, indirect proportion of maintenance of equipment expense, 10.82%, and the proportion of general expense applicable to maintenance of equipment 4.85%, producing a total cost per item 1-B of approximately 1.8¢ as applicable to the cost per revenue freight car mile for repairs, depreciation and retirements.

As far as the G. N. is concerned, the eastern terminal of our iron ore business where it is loaded is in Superior Wisconsin (St. 250). I said that a check made during the test period showed that there were approximately 1321 intrastate cars handled altogether during that seven day period, and of those, 291 were foreign line cars. I don't know whether the company had available cars of its own to handle that business during that period. I am not an operating man. I can't say as to that (St. 251). You ask if it is not a fact that the reason we have a debit or credit balance on these various rental of equipment items, is commodities originating on our line pass to the lines of foreign companies and commodities originating on the lines of the foreign company pass onto our line and we pay the foreign lines the $1 a day while the car is on our line and vice versa. [fol. 241] Yes, that is the way that goes. You ask how there could possibly be an inter-company movement of freight as to intrastate business, unless the two lines happened to be in the same state. Well, I think the situation could occur in this way. We will assume that a car was made empty at some local station in Washington, a foreign line car, and the agent is requested to furnish a car for an intrastate shipment. Rather than go to the expense of getting a G. N. car into that station, they merely load the foreign line car and let it take care of the intrastate shipment. I think that is probably the way the foreign line car use would originate. It is possible to use the two (St. 252) (St. 253).

On further Cross-examination he further testified:

The items of "interchange" as used in lines 5, 6 and 7, Def.'s Ex. "11" means where we deliver to, or receive from, a car related to a foreign line. In other words, suppose we have a shipment that is going to the N. P. from our line. When our switching crew delivers it to this certain point in Seattle, that is as far as we take it. Then the N. P. engine would take it from there on. It is shipped on one line to be delivered by another line. It may be coming from another line to us for delivery. You ask what the industrial switching shown in 8 to 12, Exhibit "11", consists of (St. 316). Well, I think the industrial covers the whole movement there. I might explain it in this way. A car comes in from line haul into Interbay, we would say, the first movement it would get would be classified out of the road train by the switch engine. The next move would be a transfer move to Seattle. It would relate to item 2 on page 26. The next move would probably involve another classification at Seattle which would relate to item 1 and the next move would then relate to item 8, industrial switching at Seattle, if the car was going to some industry in the vicinity of Second and Occidental Avenues or, in the case of item 9, it might be going to an industry in the vicinity [fol. 242] of Fifth Avenue, Seattle. In case of a car to be shipped over the N. P. or some other line from a point upon which we have an industrial track and from an industry which we serve, we would handle the car on our own industrial tracks and deliver it to the N. P. (St. 317). You ask if the situation would arise where we would charge the N. P. a certain amount for handling the car on our own tracks. I think, according to the zone agreement, it might and, on the other hand, the N. P. could be charging us for certain switching they perform for us.

You ask what the item of revenue, account No. 110, denominated "Switching" on Exhibit "11", page 11, consists of. That consists of—I think the larger proportion of it, the revenues derived from what we usually term intra terminal switching. In other words, it covers cars that probably never are involved in line haul switching, that is in Seattle, in particular, and at Everett and Spokane we move cars quite frequently from one industry to another industry within the terminal, as they may be loaded with a certain commodity at one industry and taken to another and made

empty. They are not ordinarily line haul cars that are switched in that service (St. 318). I think the revenue from such switching is received on a per car basis. We credit the revenue to this account 110 in that case. You ask if there is any classification on page 26 that includes that class of work. Yes, if we were making a terminal analysis of the cars which were switched intra-terminal. You ask if these elements of service that are itemized from 1 to 22 on page 26, Ex. "11" include that character of work. Yes. This page 26 would cover all movements that a switch engine might make in this termina-. You ask whether, in my determination of the costs per engine hour in my seven day study, I included that kind of switching. In determining the cost per engine hour, I determined the cost which would relate to any kind of switching that the engine might do, both in interstate traffic and intrastate traffic or any traffic at all. These are only inter-terminal switching (St. 319).

[fol. 243] I think I see what you are driving at in connection with this. From a study of exhibit 11 and on the work sheets which were delivered to Mr. Sharpe during my cross examination, it will be found that approximately $850,000, pages 23 and 24 for the year 1933, would be applicable to yard switching freight as an expense. Of this amount $202,000, page 2, was found to be applicable to the cost of switching intrastate on G. N. line haul cars in major terminals. The remainder of these yard switching revenues of $648,000 would, therefore, represent the cost of switching interstate traffic as well as from tentative line haul traffic interstate and intrastate and the intra-terminal switching, that is to say, switching of other than line haul cars between industries and so forth in the major terminals. In view of the fact that this legal proceeding did not involve the cost of switching interstate traffic in Seattle, the $648,000 was eliminated from the study and no further use was made of that amount. However, as I have stated, there is included in this amount of cost of switching intra-terminal and competitive intrastate line haul traffic which cost would be comparable with the amount of intrastate switching revenue, $41,977, shown by account 110 on page 11; compared with the cost of switching this traffic the revenue derived is abnormally low.

(Thereupon plaintiff's counsel objected to the witness testifying that in his opinion of such cost being abnormally low and his statement in regard to another proceeding. The witness then testified in answer to questions propounded by defendant's attorney that he made a cost study and the exhibits were all on record in Docket No. 14,563 before the I. C. C. The court thereupon overruled plaintiff's motion. Whereupon the witness continued:

I submit the following typical examples of the switching revenue per car received for the G. N. and the cost thereof in connection with the handling of this intra-terminal business. The various elements of switching required to handle [fol. 244] these cars were furnished me by Mr. W. P. Maloney, G. N. travelling auditor at Seattle, who testified recently in this trial (St. 322). The elements of cost used in my computations were obtained from pages 21 and 22 of exhibit 11. The Interbay Seattle terminal revenue received by the G. N. per car $855, switching costs per car $10.14. Operating ratio 111%. Interbay Seattle terminal revenue per car, G. N. revenue per car, $8.55, switching costs per car $9.87, operating ratio 115%. I am giving you various examples of these intra-terminal movements. Again, Interbay Seattle terminal, $5.75 per car, the switching costs per car $6.83, operating ratio 119%. Interbay Seattle terminal revenue per car, $14,00, switching costs per car, $14,94, operating ratio 107%.

(Plaintiff's counsel then moved to strike all of the testimony as to specific instances of the operating ratio as to specific haulage or service rendered, on the ground that unless they are all put in, they are not material. That they might make a considerable revenue on one and no revenue on another. That defendant should not be allowed to detail a few instances and not give them all. That if that is to be investigated, we will have to open up the whole subject of G. N.'s operating ratio as to switching service (St. 323). The court denied the motion (St. 326) and permitted the witness to testify to further special instances as follows:)

Delta, Everett, terminal, revenue per car $5.80; switching cost per car $10.18, operating ratio 174%. Hillyard, Spokane, terminal, revenue per car $7.00; switching cost per car $8.59, operating ratio 123%. The examples just

cited indicate clearly that an operating ratio of 51.33% is far from sufficient to cover the cost of intra-terminal switching. These examples were furnished by somebody else. That individual gave me the amount of revenue from these various hauls, taken from the tariffs. This individual gave me these examples as to these various hauls. I asked him for the particular examples. He gave them to me orally [fol. 245] (St. 327). They would naturally be all intrastate movements because they are within the Seattle terminal (St. 328).

C. A. MANTHE, called and sworn as a witness for the defendant, testified as follows:

I reside at Seattle and am superintendent of — for the G. N., and have held that position since June 12, 1934. Prior to that I was assistant superintendent of Spokane. I participated both at Spokane and Seattle, in the supervision of the terminal cost study mentioned by Mr. Burn in his evidence. You ask me to explain how that study was conducted. The code cards were turned over to the yard master in charge of the terminal. They, in turn, delivered them to the switch foremen with a set of instructions directing them how the code cards were to be followed, which showed, of course, the amount of time spent in doing switching under the various codes, the number of cars handled during that period of time. The code cards were in the form of Def's. Exs. "12" and "13" (St. 81). You ask me what supervision I gave this work at Spokane and Seattle. The cards were turned in to us from day to day and checked with the general yard master of the terminal. I left Spokane on June 11. The work had been, the study had been in progress then, I think, three or four days, as I recall it, and it was turned over by me to my successor, Mr. Percival. When I came to Seattle I took up the supervision of a similar terminal study that was being conducted there. Mr. Cleary had conducted the first part of that study in Seattle. His position was trainmaster. At the time of the week when I came over, I took up the work where he dropped it and followed it to the conclusion. I gave the work at Seattle the same character of supervision that I did at Spokane (St. 82). When these cards were

[fol. 246] completed and checked by me, they were sent to the Superintendent's office at Spokane, and from there transmitted to Mr. Burn at St. Paul (St. 83).

On cross-examination he further testified as follows:

Terminal service and expense in connection with operating movements is both intrastate and interstate and is a considerable part of the total expense connected with the total service rendered as compared with the line haul (St. 84).

On further direct examination he further testified:

You ask what official positions I have held in various places for the G. N.: Superintendent at Klamath Falls, Oregon; Superintendent at Crookston, Minnesota; train master on the Marchs division; train master on the Spokane division; and prior to the outside work secretary, and later chief clerk to the general manager. In the latter position I was doing work that pertained to the entire Great Northern system (St. 139). As trainmaster of the Marchs and Spokane divisions of the G. N. I had jurisdiction of all the G. N's lines in Washington. I know the manner in which the G. N. hauls its interstate and intrastate traffic. That traffic is hauled in the same train and with the same employees. It largely uses the same facilities regardless of the classification of the business. The principal cities of Washington served by the G. N. are Seattle, Spokane, Colville, Bellingham, Burling, Concrete, Wenatchee, Tacoma, Okanogan, Omak, and it has a line extending from Vancouver, B. C. to Seattle. It operates under trackage rights for 999 years over the N. P.'s line between Seattle and Vancouver, Washington (St. 140). It has a main line which it owns extending from Everett on its coast line eastward [fol. 247] across the state through Spokane and Hillyard to the eastern boundary of the state. It has a branch extending from Wenatchee up the Columbia River to Oroville, in addition, branch lines located at various places in the state. It handles both interstate and intrastate traffic to and from all these places that I have enumerated and other smaller places on its railway lines. As a practical matter all the business, whether intrastate or interstate, is intermingled and handled on the same trains and with the same employes. You ask if the G. N. as a practical matter, could

discontinue its intrastate service and continue to conduct its interstate service without an extremely large increase in the cost of the interstate service. No, it could not (St. 141).

(Def.'s Ex. "18" was thereupon received in evidence (St. 142) Def.'s Ex "19" was received in evidence over plaintiff's objection that the same was pure hearsay as to any facts purporting to be shown therein. The objection was overruled (St. 143).

FRANK V. PERCIVAL, called and sworn as a witness for defendant, testified as follows:

I took Mr. Manthe's place when he was transferred to Seattle. I picked up the supervision of the terminal study in Spokane at the point where he left it off. Referring to Def.'s Ex. "12", these cars were gotten out with the idea of allocating elements of cost in connection with the handling of cars throughout the terminal. The various classes of switching were subdivided as indicated on the classification and the switch foreman required to allocate the time of engines (St. 86) engaged in the different elements of service, showing in that service the number of cars handled, loads and empties, and the proportion of engine hours consumed in the various classes of work. You ask what super-[fol. 248] vision I gave this study. After the cards were turned into the yard master, I made it a point to check and recheck the work done by the foremen, each day until the study was completed, and also looked over—checked over the cars that had been previously completed prior to my arrival there. I have had terminal experience of approximately 28 years. Some of the places are: Everett, Seattle, Spokane, Minneapolis and St. Paul. I was superintendent of terminals for the American Expeditionary Force at base ports of La Rochelle, La Pallici and Etat Division of the Bendee Railroad. I was in direct charge of the American operations in that terminal for a year and a half. That was the third largest freight base port that we had in France.

You ask what I did with the cards such as Def.'s Ex. "12" for the week after they had been turned in. The cards from the terminal of Spokane and Hillyard (St. 87) were

sent to the division headquarters at Spokane, and they were rechecked again at that point, not only the cards from the terminals of Spokane and Hillyard, but also the terminal of Interbay, Seattle and Everett, Delta, Bellingham, Tacoma and Appleyard at Wenatchee. These cards were checked in detail again, and on the back of each card or the face of it was allocated the wages paid to the crews in question. After that was done they were sent under registered cover to Mr. Burn at St. Paul. The part of the work I directly supervised covered the terminals at Spokane, Hillyard and Wenatchee. In addition to those three terminals there were reported into the division office at Spokane the terminals of Bellingham, Everett, Seattle and Tacoma. The latter four places were originally directly supervised first by Mr. Cleary and later by Mr. Manthe. After the cards from all of these terminals including those on the east side of the mountains, had come into division headquarters, I [fol. 249] went over them all before they were sent in. You ask if in my opinion, they were a correct report of the terminal work. Yes, sir. They checked in accordance with our division records (St. 88).

On cross-examination he further testified:

I am familiar with the various switching operations at the various terminals in the State involved in a carload shipment originating in Washington and passing outside the State. A shipment originating in Bellingham and passing to a point outside of the State of Washington, moving to a point outside of the State of Washington, would involve certain switching operations. You ask what would be the normal number involved in an eastbound carload shipment from Bellingham (St. 89). The first initial terminal handling at Bellingham and the reclassification at Everett. You ask what the reclassification at Everett would involve. The car would have to be switched and possibly weighed, if it had not been weighed, and classified. On its arrival at Everett, the loaded car would receive a terminal inspection and a terminal switching. They would classify it on the track designated as an eastbound track in the order in which the train has to be made up, and move from that point by switch engine to another side track at Lowell, a distance of 3 miles. There might be 30, 40 or 50 cars hauled from Everett to Lowell at once, and sometimes less. It

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would not often happen that as few as one car would be hauled. The eastbound train out of Seattle would pick up this out of cars that were taken to Lowell and move them to Wenatchee or Appleyard (St. 91). The cut of cars of the transfer is taken over to Lowell, and when the freight train from Seattle arrives the engine is cut off and picks up this cut of cars and doubles back on the train and de- [fol. 250] parts. We might have to pick up a few more at Skykomish, and they might be either intrastate shipments or interstate shipments or both. I don't know how much of one there is or how much of the other. You would then arrive at Appleyard, at Wenatchee (St. 92). There is a little bit more done there than there is at Skykomish, to the extent that all the cars destined to Wenatchee and Appleyard and up river points are set out of the train, and what freight is accumulated at Appleyard is added to the train. We take off some and take on other interstate and additional local, perhaps. I would say that most of the eastbound business at Wenatchee would be interstate, at least during the fruit season. I am talking of a through freight train. That would carry mostly interstate—not all, but mostly (St. 93). For a through freight train there would be no other stops from Wenatchee until you arrive *arrive* at Hillyard, with the exception of possibly setting out at Spokane, for the Spokane proper business. Hillyard is 5 miles beyond Spokane. On reaching Hillyard, the train would be entirely reclassified under our present scheme of operation. Some of the cars would be iced, if it was the icing season, and some of them would be weighed, and they would be switched in unit order for movement east, and a new train made up. That is what I call a through train (St. 94). You ask how many switching operations by switch engines would be involved as to that Bellingham car. There would be one at Delta, Everett, and one at Appleyard, Wenatchee, and one at Hillyard, and one at Bellingham where it originated. That would be four. In moving a car of lumber from Napavine, Washington, to St. Paul, via the S. P. & S. with a transfer at Vancouver, and redelivery by the S. P. & S. to the G. N. at Spokane, you ask how many switching operations would be involved at terminals at which switching engines are regularly employed. [fol. 251] It would be handled by local freight from Napavine to Vancouver, Washington, and from that point it

would be classified by the S. P. & S. in a train for movement to the N. P. yard at Erie Street (St. 96), the N. P. Yard at Spokane, and that possibly might receive some switching at Pasco, but I doubt that, though, and arriving at Erie Street, Spokane, the car would be delivered to the G. N. by transfer switch engine and moved from Spokane to Hillyard by G. N. switch engine. There would be the originating service at Napavine, and at Vancouver, the switching operation to switch it onto the S. P. & S. road. The S. P. & S. freight trains at this time terminate in the N. P. yards at Spokane. The S. P. & S. pays the N. P. the cost of the switching service. But that switching service is all, nevertheless involved in that shipment. The car is delivered to the G. N. at Spokane property, and then the G. N. hauls it to Hillyard, 5 miles, and makes it up in an eastbound train. A shipment of lumber originating in Longview, and hauled in the same way would involve an additional service at Longview. There would be a terminal service on the Longview and Northern (L. V. & N.) and at the junction of the L. V. & N. and G. N. there would be another switching service onto the G. N. through train. The L. V. & N. is now owned by the N. P., G. N., O. W. and Milwaukee. But we would nevertheless have the additional switching service. Coming the other way, if the G. N. took on a car at Chehalis, that freight would then go via Seattle and Everett. Such a car would be picked up by the Portland and Seattle through freight and moved into Interbay and classified (St. 99) at that point and onto the through eastbound train. We would have the original switching service in Chehalis, and then it would continue on in that train until it reached Seattle. And it would be made up in a train there which would have from that time on the same vicissitudes as the car coming from Bellingham.

[fol. 252] The G. N. has a branch running north out of Wenatchee over the Okanogan country. An eastbound interstate car from Okanogan would be picked up at Okanogan by local train, and hauled to Appleview, and at that point it would receive attention there as to icing, and ventilation, and made up, and classified there, and made up in a through train to the East, and would have the same switching service at Hillyard as the others (St. 100).

As to a car coming from California on the G. N.'s new road, you ask what would happen to that car after reaching

Bend, Oregon. The S. P. & S. would take delivery of it at Wishram, on the Oregon side (St. 102). Wishram is in Washington. In Washington it would be made up into an S. P. & S. train, at the G. N.'s expense. In that connection there possibly (St. 103) wouldn't be any particular expense of picking up a car at Wishram, simply stopping and picking up a certain number of cars at that point that were all intact and keep going. The S. P. & S. hauls this particular car in its own trains and with its own crews, and the G. N. pays for that service. The possibilities are there would be something added to the train at Pasco. The S. P. & S. would reimburse the N. P. on a contract basis for the switching at Erie Street yards in Spokane. Our expenses would not start until the car was delivered to us. We would pay the S. P. & S. for that service in the form of rentals eventually. It is approximately true that all interstate eastbound business originating west of Spokane is entirely reclassified at Hillyard (St. 104). There are other trains running through that town. We would have the same reclassification at Hillyard into other trains of any shipment coming through from points east of Washington and destined to points in Washington west of Hillyard (St. 105). All the switching service that I have given as examples on eastbound service would be approximately [fol. 253] the same on westbound service. You ask if Washington may not be looked upon as a great big freight yard for the assembling of freight traffic. Not any more so than any other terminal point on the Great Northern or any other intermediary terminal point. We are talking about business here destined to points without the state. True, all classes of business receive these terminal handlings within the State excepting those terminals where the business originates or terminates. There is a difference in that case (St. 106).

On redirect examination he further testified:

If each of the 6 cars traced on cross examination had been destined to Colville, Washington, each would have received the same handling testified to, and would in addition have received a terminal handling at the point of destination. You ask if there is a difference between the work that is done at the originating or terminating point and the work that is done at an intermediary classification yard. Well,

the difference begins immediately after your train has been classified. For example, it costs as much to switch a train at Seattle or an intermediate terminal, but after that is done, then you have to effect delivery of the car to the consignee and that is where your cost begins to go up. If it is moving in the opposite direction, before (St. 107) you can get it into this classification yard, you have to get it from the shipper's side track and bring it in there. That is also one of the points where our costs go up.

On recross-examination he further testified:

On arriving at Colville, this car would probably have to be set in, spotted, at the gentlemen's place of business. [fol. 254] Possibly there would be other cars there to take out. We would run it up to his warehouse on his industrial track and leave it there and move the train on. Well, it sounds very simple with only one car, but you are usually around Colville an hour and a half doing that local switching (St. 108).

I testified that this switching operation at Colville might involve holding the train there for an hour and a half,—a local train. You ask if it would also involve holding a train over for an hour and a half to pick up the car at Napavine or wherever it originated (St. 109). You ask if doing all that would not involve an awful lot of expense. Yes, but the work has to be done regardless of expense.

We will have to assume that it costs more to run a local train than it does a through freight train because that local is engaged in intermediate switching. We pick up and deliver interstate cars with that local train the same as we do intrastate cars (St. 110). You ask if that one local delivery service we perform involving an hour and a half would not be the equivalent of hauling the car a good many miles on the line. Well, again, it would depend on whether you were hauling them in a through freight or a local freight. Assume this local train was an hour and a half at Colville on station switching and went along 5 miles further and did some more station switching. Of course, it costs more to run that local train than it would a through freight train. You ask if that would not be the equivalent in expense of hauling a car many miles on the line haul movement of that train. Yes, I presume it would, but it would be difficult to arrive at exactly how much (St. 111).

On further redirect examination he further testified:

[fol. 255] If those eastbound interstate cars referred to were destined to St. Paul, you ask if the trains hauling them would not receive intermediate terminal switching between Hillyard and St. Paul (St. 113). Yes, at White Fish, Montana, Havre, Montana, Williston, North Dakota, Minot, North Dakota, Breckenridge, Minnesota, and a full reswitching and reclassification of the train at Wilmer, Minnesota. Wilmer is a terminal located 100 miles west of Minneapolis. You ask what terminal handling they would receive at the Twin Cities. Primarily the east and west trains are classified for delivery at Wilmer, classified at Wilmer for delivery to Minneapolis. That is to obviate the additional classification of the train at Minneapolis. If the car were destined to some consignee in Minneapolis, you ask me to describe in a general way what switching the car would incur. Well, if the car was destined to a consignee located on the G. N. Tracks, or tracks of other companies, in West Minneapolis, it would be set out at Lyndale Junction, and from that point on it would receive a complete terminal handling, from that time on until it arrived at the consignee's place of business. You ask what that complete terminal handling would be. Well, presuming that the car was destined to West Minneapolis, to some of the industries located on our own track at that point, it would be set out at Lyndale, classified into a transfer moving in that particular district, and after arrival there it would be classified again and placed at the consignee's warehouse (St. 114), by switch engine, and of course that becomes quite involved when it is destined to consignees whose places of business are located upon other railroad owned tracks.

In 1931 I rode one of our fast freight trains out of Seattle to St. Paul. In that train approximately 20% of the total leaving Seattle were carried through on the train in-
[fol. 256] tact. The rest were set out at intermediate points, either to pick up preferential tonnage or became bad order en route, or something else. Some were probably destined to consignees west of the Twin Cities. Some were going to the Burlington at Billings. You ask if, replacing this 80% of the cars that were dropped somewhere en route, there was not additional business picked up (St. 115). Yes, sir, at the different main freight terminals, beginning at Wenatchee and Spokane and east.

On recross-examination he further testified:

The G. N. connects with the Burlington at Billings, and the N. P. at Laurel. You ask if a big part of our train was not transferred onto the Burlington at Billings. The general ratio would be about, in a 100 car train, would be about 1/5th would route via Billings. You ask if our service at the Twin Cities would not be practically the equivalent of the service at Seattle. A little more complicated at Minneapolis, by reason (St. 116) of the fact that it is a larger terminal. You ask if the handling of the specific units in the train would not involve about the same time and expense in Seattle as they would in the Twin Cities. Well, that is a difficult question to answer. These fixed expenses, cost of cars and terminals, are not stationary. They keep fluctuating from day to day. You ask if it is not a fact that I cannot compare the expense on an average at Seattle with the expense at the Minnesota Transfer. Well, you understand, the Minnesota transfer primarily was first intended for the interchange of through carload business, as between the different railroads at that point, but of late years the industrial section has built up adjacent to Minnesota transfer to that really now 3/4ths of our business is terminal business rather than interchange of carload through freight (St. 117).

(Witness excused.)

[fol. 257] STIPULATION

It was stipulated by counsel that if Mr. Cleary, referred to in the foregoing testimony, were called as a witness, he would testify to the same effect as Mr. Percival did with respect to the particular service he performed in connection with the special study (St. 109).

EDWIN C. MATTHIAS, called and sworn as a witness on behalf of defendant, testified as follows:

I am one of the attorneys of record in this case, and in the suit that was filed in the Federal court to restrain the enforcement of the occupational tax law against the railroad company. I have participated in various conferences

with the Washington Tax Commission concerning returns that were to be filed by the G. N. Railway Company under the occupational tax law; principally with Mr. Jenner, Mr. Harsh was present at some of them. I understand Mr. Harsch is sort of an attorney or legal advisor for the Commission (St. 254).

I am familiar with how it came about that we filed amended answers to the interrogatories after we had made a further study of that account, and the reasons how we came to eliminate some of those revenues as not being properly included as intrastate commerce. Shortly after the opinion was handed down by the Federal Court denying the preliminary injunction, Mr. Jenner asked for a conference with the railroad attorneys, and he ame to Seattle and we had a conference in Mr. daPonte's office. That was, I believe, late in January, 1934. It was at least some time prior to February 15th. At that time he said that the Commission was somewhat embarrassed because the railroads had not filed returns. That as long as the Federal case was pending there was some explanation for it—while the case was still pending it had been as a matter of fact decided [fol. 258] against us, and he wanted to (St. 255) know if we would not come in and file returns.

Well, we told him we did not want to file any returns, at least before a final order was entered in that case, and we were considering filing an amended complaint.

That conference did not result in anything because we could not tell when we could get a final order from the Federal Court, because at that time Judge Neterer was sick, and the agreement was that we would try and bring it about that some other order would be entered soon.

Well, subsequently there were several conferences with Mr. Jenner along that same line, at one or two of which Mr. Harsch was present. My recollection would be that there were probably 3 conferences altogether, and maybe 4. We finally filed an amended complaint after the final order had been entered denying—no, I don't know as an order was entered, but we filed our amended complaint in the Federal Court case. When I say "we" I mean all 4 railroads. Under date of February 15, 1934, Mr. Jenner wrote the G. N. a letter, and sent a copy of it to all the other railroads, and I see also to Mr. Sharpe. I have that letter

before me. I don't know as it is necessary to introduce it in evidence.

He says in that letter, in substance, that he sees that the Federal Court case is not going to end very soon, because we have gone ahead now and filed amended (St. 256) complaints, and he supposes they will have to go up to oral argument, and he says in fact this: "In this we see nothing but the possibility of considerable delay before a final order is entered. You have indicated that you shall not file returns until such an order is entered. Under the circumstances the Commission must proceed to determine the tax liability of the railroad companies for the last 5 months of [fol. 259] 1933. Without returns from the companies this can be done only upon assessments by the Commission. If you now feel that you can change your decision with reference to the filing of the returns for these months, or for such of them as you have information available, without awaiting the entry of the final order in this case, please advise us." Signed "Business Tax Division, By T. M. Jenner."

Now that is the last 2 paragraphs of the letter, and the first paragraph refers to the Federal Court case.

Now having that letter before us, we, of course, had in mind what Mr. Jenner had told us at some of these conferences. In fact, I think at every one, that if the Commission had to make an assessment, they would impose the penalties provided by the Act, but as they construed it if we filed the returns, even if we did not pay the taxes, they could not impose penalties, and they wanted us at least to file the returns or they would impose the penalties. So we did not want to incur penalties, and therefore we proceeded —I say "we" in this respect, I mean our company, and I believe the others did likewise, to advise our accounting representatives to prepare tax returns. And those returns (St. 257) were prepared therefore more or less in haste and no study was previously made as to the items which should or should not be included in those returns. What I mean by that, I, as attorney for the railroad Company, up to that time had given it no thought, because we were contending the statute was unconstitutional, and we did not expect to pay any tax, and the amount had not become material.

Therefore upon telegraphic advice that the returns should be prepared, our comptroller prepared them and sent them out to me, and I filed them at the time this rec-
[fol. 260] ord already shows, which I believe was about February 24th. Yes, it was between February 15, when we got the letter from Mr. Hess, and February 24th. The returns had been prepared in St. Paul and sent out to me, and on February 24th I mailed them to the Tax Commission.

In the protest accompanying that return which I prepared I stated that there would be likely to be some corrections made. I had no specific corrections in mind at that time, and merely included that statement under an abundance of precaution, because I realized they had been prepared in more or less of a hurry to avoid the imposition of any penalties.

Then on March 6 the Commission issued a typewritten set of instructions, which they entitled "The Liability of Steam Railway Companies under Chapter 191, Laws of 1933 and amendments thereto," in which they set forth, in 4 typewritten pages, or about 3 and a third typewritten pages, single space, references (St. 258) to these I. C. C. accounts, and the Commission's interpretation as to what revenues under these accounts are subject to the tax and what are not subject to the tax. And Mr. Harsch sent those to me, a copy of those to me, under date of March 6th he signed the letter. That was under both the original act and the amendment. He refers to both of them. Now that letter, I see, is copied to the attorneys for the other railroads. Following that letter the railroad accountants—my file shows—got together in the East on March 29th, and raised certain questions with reference to whether some of those revenues were not, as a matter of fact, I. C. C. revenues instead of intrastate. And the Tax Commission advised us that they would like to hold a hearing—in fact this letter of March 6th from Mr. Harsch transmitting
[fol. 261] these regulations says, "The Commission will be glad to set a date for a conference to discuss the matter, if you so desire."

Now we did not ask for a conference at that time, but the Commission did set a date, and that was subsequently agreed upon with the railroad attorneys—I had fixed the date that was agreeable to all of us—of May 11th, and

Mr. Tower and Mr. Burn, I believe, came out from St. Paul, for our company, and the attorneys, Mr. Merritt for the U. P., and Mr. Macfarlane for the N. P., and Mr. Edwards for the Milwaukee, and their respective auditors, Mr. Pinger for (St. 259) the N. P. and Mr. Strassman for the Milwaukee, and Mr. Langton of the U. P. went down to have a conference with the Commission. That was attended by those men, with Mr. Jenner and Mr. Harsch for the plaintiff—at least the purpose of the meeting was to determine if possible what revenues were subject to the tax. Well, we had just merely a friendly discussion, not of specific revenues, but raising specific instances and questions which would arise before the Commission. And Mr. Jenner or Mr. Harsch stated that in view of the pendency of this lawsuit in which those questions would have to be determined, they could not see how they could determine them at that conference, and the meeting was adjourned with the understanding that if they reached any contrary conclusion, and they thought an agreement was possible, they would give us notice and we would come back again.

Well, following that meeting—it had by that time become very apparent to me that there were many and sundry legal questions involved in connection with the revenues which had been reported in our answers to the interrogatories and in our original returns and in our report to the D. P. W., which from the standpoint of a lawyer I believe were not [fol. 262] intrastate revenues. Therefore, I undertook a study of the legal questions involved.

Now, before passing to that I neglected to refer to the answers to the interrogatories. On either the (St. 260) last day of February or the 1st day of March we were served with the complaint in this case and with the interrogatories. I transmitted those to Mr. Hess in St. Paul immediately, our comptroller, because, of course, under the statute an Answer has to be filed promptly, and I requested, I recall, that they be in my hands by the 16th of February. And they were prepared there without legal advice, I believe, because I gave none, and they were filed immediately upon their receipt. That was prior to the time we had given any serious thought to the question of whether some of these revenues had been improperly classified as intrastate.

Under date of March 19th Mr. Hess had written to me also calling my attention to the fact that there revenues from export shipments, such as apples to the Seattle docks, and so forth, in these revenues, which we had reported under account 101 as intrastate, whereas they were probably foreign. And so as a result of all of that I went into the study of the question, and wrote at length under date of June 15th to our Comptroller, Mr. Hess, and I have no objection to putting a copy of the letter in evidence, although I do not see why—it would only encumber the record. I made of course, no attempt to pass upon the facts, but I attempted to state my conclusions as to the principles of law involved, and directed that they—requested that they make a study of the accounts for the purpose of picking out of the accounts the revenues which were properly classified as interstate or foreign under the principles of law as I had concluded them to be (St. 261).

[fol. 263] At that time the cost study had been—Mr. Hess' office had been requested to make a cost study and I said in my letter to Mr. Hess that it would be necessary to file amended returns, I thought, and amended answers to the interrogatories if he determined there were any such revenues in accordance with my advice. I also requested—well, I directed, in a way, how the auditors should go through the accounts for the purpose of determining these questions and I also suggested that, in making this cost study, it should be made in the alternative, that is, it should be made first under the revenues as reported to the Department, and, second, that it should be made, taking into account any revenues that he found which should be thrown out as being either interstate or foreign. My idea being that, by such a study, we would have an entire picture when the witness got here to testify at this trial. That is contained in my letter (St. 262). Being familiar with the way our business is transacted by departments, I know that this part of the letter got into the hands of the auditor and apparently my suggestion about the cost study being made to that extent was not called to Mr. Burn's attention. He worked in Mr. Hess' office. I expected to go back to St. Paul and check up on this cost study with the witnesses that had gone over the accounts but I had a bridge case, Emerson Street Bridge case set for trial in the Federal Court which was continued and lasted much longer than was expected and the prepara-

tion of the case took a great deal of time so I didn't get out of that case, finally, until the 1st of October, and there wasn't enough time left to go back to St. Paul and do this work in time for this trial. Therefore, Mr. Burn arrived out here and when he arrived I found for the first time the cost study had just been made on the one base. That was [fol. 264] the basis of the 1933 revenues as reported to the D. P. W. The date of my letter to Mr. Hess was June 15, 1934. I may say that I spent about 3 weeks st-*yd*ing the questions involved. Of course, it was in line with my other work, too, so it took more time than it would otherwise, but I was from some time in May at odd times looking into the questions and (St. 263) there are numerous and sundry questions raised by these accounts. That is in the form of a brief; I cite cases, yes. Mr. Burn arrived here about 2 weeks ago, Thursday. You ask if with him were not Mr. Brown and Mr. Tower connected with the accounting department who had been making studies of certain business which it was thought might possibly be properly classified as a matter of law as interstate business. Yes, I told Mr. Hess. I advised him he should have some one in his office go through the records who could be prepared to come here and be a witness and those are the men that he had sent in answer to that request. After this a conference was called by Mr. Balmer and myself of certain gentlemen residing in the state of Washington who could advise with our auditors on these questions concerning the practical handling of the business. You ask whether or not, as a result of that conference, certain conclusions were reached as to what part of the business that we had originally reported as intrastate was, as a matter of law, interstate (St. 264). Yes, and I might say, in that connection, if I may go back, that I found that, prior to my letter to Mr. Hess, they had been going into these accounts and they had decided on certain revenues to eliminate and after receipt of my letter they put some of those revenues back in. For instance, I can cite oil coming into Richmond Beach and later reshipped to points in Washington. Under my advice I said that was intrastate commerce, although they had previously through those revenues should go out, so there wasn't any [fol. 265] attempt to decide the question except upon a strictly legal basis.

HERBERT H. BROWN, called and sworn as a witness on behalf of defendant, testified as follows:

I reside in St. Paul and am supervisor in the office of auditor of freight receipts of the G. N. Railway. I have had 27 years of accounting experience with the G. N. I am familiar with plff's. Identification "20". (Mr. Matthias, of counsel for defendant, states that this was not introduced in evidence.)

Plff's. Identification "20" was then offered in evidence as Def.'s Ex. "20" as a convenient statement showing what had been eliminated to which the witness' testimony may be related, and not to prove the fact that the items thereon were properly to be eliminated as intrastate traffic.) (St. 266.) I am familiar with Def.'s Ex. "20", and participated in its preparation. You ask if I also made some study of the accounts of the G. N. railroad company in St. Paul to determine whether certain of these revenues are interstate or intrastate. Yes. You ask if I made a study concerning the item shown on exhibit "20" as account "101", freight subdivision, "A", consignments originating in Washington and specifically billed for export $92,580. Yes. You ask how I made that study. This represents freight charges on shipments billed from the state in Washington to a port in Washington specifically for export of car for a specific boat. Figures were obtained from the agents in Washington and from reports in the general office. You ask me to what part of the records in the general office I referred in making that study. We prepare our statistics in the office by the punch card system. There is a punch card made for every carload received, way bill, that is locally received way bill. There [fol. 268] are also punch cards made for all of our interline statements covering business interchanging with other lines and from these cards we listed all shipments of flour and apples from (St. 267) stations in Washington to Seattle dock. Now, that is material that was obtained in our office.

(At this point the following proceedings were had:)

"Mr. Sharpe: Now, Your Honor, I want to object to all of this testimony upon the ground that the books of the company have not yet been introduced in evidence and, until they are, it is all incompetent and immaterial and hearsay. These things are all most necessary and, it appears from the testimony of the witness, are all a part of the records

of the company and which are back in St. Paul and are not included. I understand and, I think, counsel agree, it is not included in the report to the D. P. W.

"Mr. Balmer: They are included, but not segregated. The books cannot be produced because they are too voluminous.

"Mr. Sharpe: I object to any testimony of this witness in regard to the contents of the books until the books are produced and it is pure hearsay. I have no possible chance to investigate these matters without the books.

"Mr. Balmer: The case is within the voluminous evidence rule. The books cannot be produced. The witness can testify to his inspection of the record.

"Mr. Sharpe: He said they were all on cards and he got his information from station agents and so on, which is certainly hearsay.

"The Court: I think the objection may be overruled (St. 268).

"Mr. Sharpe: Exception."

The witness then continued:

In addition to that we wrote to stations and ports in Washington and asked them to furnish us with statement of billing covering all carload shipments originating in the state of Washington and by them exported, with the exception of flour and apples for seattle dock which we obtained in the office and, therefore, the agents were not required to furnish them. You ask why I looked for shipments that were destined to the Seattle dock. Because it was our understanding that Seattle Dock is practically all used for export or trans-shipment to coastal points. The revenue [fol. 267] from total amount of shipments of that kind that I found during the 5 months period was $92,580 (St. 269).

(The witness was then asked what investigation he made of Item "B" in Def's Ex. "20": "Consignments originating in Washington and billed to warehouses and elevators practically all of which would be exported or transported by water and/or rail to other states, total $65,558." To this question plaintiff's counsel objected as follows:)

"I object on the ground that it calls for the conclusion of the witness and is pure hearsay and upon the further ground that it is obvious that this inquiry would raise a

large number of collateral issues in this case, each of which (St. 269) would require a trial by this court for the purpose of determining the true character of these particular shipments and each and all of these particular shipments."

The witness then continued:

You ask what investigation I made of item "B". We wrote to agents at Seattle, Tacoma, Everett and Bellingham and asked them to furnish us with the statement of billing during the period from August 1st to December 31st, inclusive, 1933, covering all shipments originating in the state of Washington billed to elevators and warehouses, practically all of which would be imported or transported by boat and/or rail, either in interstate or foreign commerce. We received statements from the agents in reply, a statement for Everett and Bellingham being blank. The agent at Seattle submitted a statement in which he says—

(Thereupon plaintiff's counsel objected to testimony as follows:)

("Now, I object to that as pure hearsay as to what was done here and by correspondence between the agents of this interested, extremely interested (St. 271) party in trying to upset a law as to it and it certainly is not proper;) these are self-serving declarations included in any correspondent- between the agents of this company and their [fol. 268] collection not only relieves them from the tax but, according to their showing, they are losing money on this interstate commerce. It wipes the tax out entirely, according to their contention. How can a case be proven upon any such evidence as that, Your Honor. Surely this is pure hearsay and self-serving. There are no records and this isn't an attempt to get in their record. It isn't anything kept on their books."

(The objection was overruled (St. 272). Whereupon Defendant's counsel stated that the witness wrote for the information because the books were in Seattle and he had to write to the agent there to get them. Plaintiff's counsel thereupon objected to the testimony on the further ground that it was not the best evidence, was pure hearsay, and an attempt to inject the contents of the G. N.'s books into the

record without producing the books and without producing the original documents upon which such statements were based. The objection was overruled (St. 273). Whereupon the witness continued:)

The agent at Seattle submitted us a statement covering carloads of grain which originated in the state of Washington and received here during the period August 1st to December 31st, 1933, inclusive. These carloads delivered to Hanford Street Port of Seattle elevator (joint tracks) and Northwest Dock and Elevator Company, located on N. P. tracks. The agent at Tacoma also submitted a statement headed "Shipments billed to elevator and warehouse for water transportation August 1st to December 31st, inclusive, 1933."

(The witness was then asked if the total of the revenue reported on that group of shipments was $65,558 for the 5-month period. Plaintiff's counsel objected to the question, whereupon the court said: "It may be understood all the objections you have may run to this" (St. 273). The witness then continued:)

You ask what investigation was made of Item "C" on [fol. 269] Def.'s Ex. "20" entitled "All other imports billed to Washington stations from Washington ports." (Plaintiff's counsel objected to questions on the "same ground.") This item covers imports as enumerated in the above captioned figures were obtained in the general office from the original way bill where the original way bill showed revenues to origin in other states or moved in by steamship lines. (Objected to by plaintiff's counsel on the ground that the way bills were not in evidence and plaintiff had no chance to examine them. The objection was overruled.) You ask what indications there were on the way bills that these shipments had come from other states or foreign countries. (Question objected to as hearsay. Thereupon defendant's counsel stated that he was content that plaintiff's counsel have a general objection to all of this testimony on all possible grounds.)

I have a list here showing origin on our line at Seattle or Seattle dock *weigh* bill, date and number of port charges for each individual shipment, also the information as to the origin beyond shown on the original *weigh* bills. You ask what was typical of some of those origins beyond to

indicate that the business was import business and not local. (Objected to by plaintiff as calling for conclusion of the witness, in addition to the other grounds.) (St. 274.) A great many shipments showed origin of the Pacific Steamship Company. I find one Los Angeles, California, San Francisco, California, some from the Williams Steamship Company and I see one here from Chicago, Illinois, one from Peoria, Illinois and various points in other states or moving by steamship line.

You ask what investigation I made of Item "D", Def.'s Ex. "20" "the initial local state revenue collected for ship-
[fol. 270] ments into transit stations." We were furnished with a list of the stations on our line in Washington at which transit privileges are accorded and the commodity. (Counsel for Plaintiff: "Same objection to this testimony.") Using this list as a guide from the cards prepared from the original way bills and interline statements in our office we listed all of the shipments covering such commodities into such transit points. The total revenue of those shipments was $308,896.

You ask as to Item "E", Def.'s Ex. "20", "Absorbed switching". Item "E" covers absorbed switching. The amount shown here is $14,997 (St. 275). This covers switching by a line at a terminal where the company performing the switching did not have the line haul and the company having the line haul has absorbed the amount of this switching in their operating revenue. This absorbed switching account is a debit to freight revenue, account 101. Our accounting procedure in our office, it has been customary to charge all of such items to interstate freight, rather than to allocate some of it to intrastate freight and this item covers the amount of switching absorbed on intrastate cars and merely transfers this item from the interstate to the intrastate columns.

Item "F", Def.'s Ex. "20", covers billing and transit adjustment on grain originating outside of Washington and the produce reshipped to points in Washington, amount $41,055. That is revenue collected for the outbound movement in the state of Washington from transit stations in Washington on business, however, which had originated in other states and moved from those other states into the Washington transit station (St. 276). You ask what the character of service or change is that the shipments re-

ceived at those stations, giving a few typical instances. [fol. 271] Well, sometimes they are merely cleaned and separated in transit, covers fabrication in transit, milling in transit, turning the wheat into flour or feed, creosoting the poles in transit, grazing of livestock in transit. You ask if they are privileges accorded in connection with the through movement of the freight. When the point of origin of the raw product is in one state and the point of destination of the finished product is in another state, the business is governed by interstate rates published with the I. C. C. and the railroad company's revenues are collected on the basis of those tariffis (St. 277).

I investigated the item of $13,157.72 deducted in the amended answers to interrogatories: "freight revenue intrastate in Washington received from United States Government shipments". This item represents freight charges on U. S. Government freight, on which the charges are collected from the U. S. Government. The original freight bills, approved by the government official receiving the freight, was (St. 278) sent to the general office of the receiving freight agent for collection, and it was from these original freight bills that this item was compiled. The freight bills show that the shipments were U. S. Government shipments. I also investigated an item of $6,033.22, which was deducted from the intrastate revenues originally reported both in the original Answers to Interrogatories and in the original returns to the Tax Commission, on account of freight revenues earned within the State of Washington on traffic handled by and on acocunt of the State of Washington. This was obtained from our agents who were required to send us a copy either of the original way bill or of the freight bill covering every shipment consigned or paid for by the state. It covers mainly charges for state [fol. 272] institutions and for the State Highway Department. I might say that business where contractors doing business for the State of Washington is not included in this amount. You ask if it included only the business that was consigned to or from the State or state officials. Yes, sir, largely State Highway Department (St. 279).

On cross-examination he further testified:

You ask from what source I got the information, $92,580, Item "A" on Def.'s Ex. "20". The records in the G. N.

office consist of punched cards and also of the way bills in our settlements with the original lines which are the G. N.'s general offices at St. Paul. You ask how many way bills would be included in that item. I would estimate 1000 way bills. It must be understood, however, that our way bills are bound in forwarded station order by months, in volumes, and those volumes are being used very considerably. If we were to bring all of those volumes it would be a very voluminous record (St. 280). I could not state positively whether copies of those way bills are located in Seattle. I believe those way bills are made in duplicate or triplicate or quadruplicate. I believe the station agent has one copy. I could not be positive, but I believe they have. When the forwarding agent, who is the one who retains a copy of that way bill, way bills that shipment, he very frequently does not know where the shipment is going, the car may not be weighed and the correct weight is not on the way bill, and even the correct charges are not on the way bill, those charges being verified by the receiving agent after the car has been weighed, and also verified in our office. I mean that the agent at the station from which the goods are [fol. 273] consigned does not always know where the car is going. The way bill is made out when the shipment is ready to move forward. Shipments are very often diverted (St. 281).

They do not go to the place where they are originally billed. The only method in which the State's attorney could possibly check my figures on item "A", Def.'s Ex. "20" would be by an examination of those way bills.

Referring to Item "B", Def.'s Ex. "20", total, $65,558. This information was obtained by letter from agents in Washington. We would not be able to tell from the way bill all of the information necessary in preparing this. I wrote to the agent and asked him, and the agent wrote to me and purported to tell me, and then I took this information off of those letters I got from the agents (St. 282).

Referring to Item "C", Def.'s Ex. "20", you ask what kind of shipments I would have in mind in that case. Well, these are shipments originating either at some other state in the United States or some foreign country, and rebilled at a Washington port to a point in Washington. You ask where I could get the information as to whether they were rebilled at the Washington port. From the original way

bill issued by the Washington port or the agent at the Washington port. What I have said in regard to way bills in conncetion with Item "A" in Exhibit No. "20" would apply likewise to "C".

Referring to Item "D", Def.'s Ex. "20", you ask if I know anything about transit shipments. I am not a traffic man, but I know something about transit shipments. It is very intricate. In the first place when goods are shipped to a transit station, the local freight is paid. And the consignor registers his goods in transit (St. 283). He may not exercise that privilege at all. You ask if the converted product may not be shipped to an entirely different sta-
[fol. 274] tion than that indicated upon the register. Well, I am not a traffic man, but I suppose that he could. I would say the consignor has complete and entire control over the goods. When the consignor registers the goods in transit, I don't think he registers it for consignment to a definite place. You ask if it is not a fact that he can sent it anywhere in the world he wants to after it is converted. I am not a traffic man, but I would say that he could send that to any destination where through rates apply from the point of origin, and transit privileges are allowed at this station. I got that information from way bills. You ask if I got it in the same way that I got my information as to Item "A", from way bills. Well, in the same way that we got the apples and the (St. 284) flour. That was by examining cards that were made from the way bills. We did not even look at the original way bills to see what they said, but got that information from these punched cards. Punched cards are a system by which you punch cards in a certain way and you can run them through a machine and have them all sorted or tabulated, and get any statistics of any character we want, included on the punching in the cards (St. 285).

Item "E", $14,997, absorbed switching, was all converted from interstate to intrastate (St. 285).

Referring to Item "F", "Milling in transit adjustments on grain originating outside of Washington and the products reshipped to points in Washington." The shipments from points outside of the state to the transit station in Washington would, of course, be interstate. You ask if the reshipment from the transit stations to Washington points, if deemed a separate transaction or shipment, would not be

local. If deemed a separate transaction, they are moved only within the state, but they are governed by an inter- [fol. 275] state charge from the point of origin outside of the state. Under "F" we transferred $41,000 from intrastate to interstate. The information as to "F" was taken from reports furnished to our office by the Transcontinental Freight Bureau (St. 286). (Question by Defendant's counsel.) That is an agency of all the carriers. They just furnished us the information. You understand this is a form that is regularly furnished our office every month, and covers all of the outbound business. We make our books up according to that report. That information would be contained in way bills. Copies of the way bills would be in the State of Washington (St. 287).

Plaintiff's counsel thereupon moved to strike all the testimony of the witness in regard to the amount of the various items shown on Def.'s Ex. "20", from "A" to "F", inclusive, and each of such items, on the ground that such testimony was not the best evidence, in that he failed to produce the records upon which his testimony was based, the way bills being in the State of Washington and available; and upon the ground that such testimony was purely hearsay. Counsel further moved that the testimony of the witness be stricken with respect to those items concerning which the data was acquired by correspondence between various agents of defendant as pure hearsay, even the letters themselves if produced, being self-serving declarations. Whereupon the court said: "That is the same objection. Your motion is the same as the objection that you made at the time of the introduction, and the same ruling. The court will reserve its ruling" (St. 288).

William P. Maloney, called and sworn as a witness on behalf of defendant, testified as follows:

I reside in Seattle, am travelling auditor of the G. N., and [fol. 276] have been engaged in railroad accounting work with the G. N. for 19 years, 16½ years in Seattle. I am familiar with the Company's business in and about Seattle, and with the business the company does at its dock in Seattle. You ask if I made an investigation to determine the true character of the item shown on Exhibit "20" as

wharfage in the amount of $25,000.00, which was transferred from the intrastate to the interstate accounts in the railway company's amended Answers to Interrogatories and amended return in this case. In the usual course of my duties I audit that account (St. 289) regularly. You ask if I know how this money was earned by the G. N. (Objected to by plaintiff as not the best evidence. Objection overruled.) You ask for what service it was earned. (Objected to by plaintiff as not the best evidence. Objection overruled.) For wharfage, loading and handling charges on freight handled over our dock at Seattle, Washington. You ask where that freight was moving. (Objected to by plaintiff on the same ground. Objection overruled.) It comes from the boats and goes forward to various destinations both in and out of the State of Washington. It also moves by rail from various points of origin to the Seattle dock, and goes forward by boat to various foreign and domestic destinations out of the state. You ask if it was all earned in connection with the forwarding either of shipments that were going from the State of Washington to outside points or from outside points inside of the State of Washington and passing over this dock. Yes, sir. It was for services performed in the transfer from rail (St. 290) to ship, or ship to rail, as the case might be. (Objected to by plaintiff as not the best evidence. Court reserves its ruling.)

[fol. 277] On cross-examination he further testified as follows:

You ask where I got my information concerning the movements of this freight. It is shown in the station records at the Seattle dock at Seattle. You ask from what original sources we get the information when it is entered in the station records at Seattle. Well, on the freight arriving, coming off a boat, we get a copy of the ship's freight list, which shows the weight and the destination. In some cases it is through ocean bill of lading. Usually it is forwarded from Seattle. You ask if any of this $25,000 includes consignments in which there is a through bill of lading from some point out (St. 291) side of the state to some point beyond the limits of the state. Yes. You see, take your through ocean bills of lading from points in the East, consigned for shipment through to a point in the Orient, would be handled that way. You ask how many of

those. Well, I could not say the proportion or even how many. That would be shown by these bills of lading of which we have copies at the Seattle dock. I have said that there were also shipments that came off of ships and were later reshipped to some other points. You ask what the sourses of that information were. It would be shown on the ship's freight list in the first place, and if the shipments were handled by, say, a brokerage firm in Seattle, and reforwarded by them, it would all be shown on the billing which they furnish us. All the wharfage earned at the dock is included in (St. 292) the $25,000. (Questions by defendant's counsel.) Shipments coming from the Orient are, in a great many cases, billed to Seattle as a single consignment already marked—each case marked for various destinations in the United States. An import brokerage house in Seattle will issue a new bill of lading then, a domestic bill of lading for each individual lot on which the shipment will then move to the various destinations in the [fol. 278] United States. The final destination, of course, is determined before it leaves the Orient, and the case is so marked. (Questions by plaintiff's counsel.) This information is all shown by these various bills of lading in our possession. It is all a matter of record at the Seattle dock office (St. 293).

Plaintiff's counsel thereupon moved that the testimony of this witness in regard to this $25,000 item be stricken as not the best evidence, and pure hearsay. The Court stated that it was reserving its ruling on this the same as the other (St. 293-4).

JOHN A. TOWER, called and sworn as a witness on behalf of defendant, testified as follows:

I live at St. Paul and am tax accountant of the G. N., attached to the Comptroller's office. The comptroller is in charge of all the company's books and records. I made an investigation concerning the item of $1,820; account 110, switching, in Def.'s Ex. "20" (St. 294), "(c) and (d)" should be corrected to "(b) and (c)" on the exhibit, under account 110. You ask me to explain the deduction that was made. It is switching pertaining to revenue of the general classes shown in items "B" and "C" under account 101, freight; on exhibit "20".

On cross-examination he further testified as follows:

You ask how I know it was that kind of switching. Under my direction I had the auditor of station accounts give me the revenue he received from switching for shipments that come under B and C here. I wrote a letter (St. 295) to the auditor of station accounts, and he wrote back telling me what they were. I am testifying from what his report was to me in response to this letter. That is my sole source of information. (Questions by defendant's counsel.) The [fol. 279] auditor of station accounts is one of the subordinate officials to the comptroller. My letter was writen for the comptroller (St. 296).

Plaintiff's counsel thereupon moved that the testimony of the witness be stricken on the ground that the same was pure hearsay, and that books and records of the company from which this information might properly be secured had not been introduced in evidence: On this motion the court reserved his ruling (St. 296).

H. O. Berger, called and sworn as a witness on behalf of defendant testified as follows:

I live in Seattle, and my business is consulting rate and traffic expert. I have been engaged in that business since 1927. Prior to that time I was with the D. P. W. from 1921 to 1927 as assistant, and as rate and traffic expert for the Department during that time. I made an investigation of how the commerce covered by the items shown on Def.'s Ex. "20" was moving, with a view to ascertaining whether it was properly classifiable as intrastate commerce on the one hand or interstate or foreign commerce on the other (St. 297) hand. You ask how I made the investigation. In company with Mr. Maloney and Mr. Brown we examined certain of the station records at the Seattle and G. N. Seattle dock offices to specifically check certain of the shipments that were reported in there, and determined from those figures there, from those records, and also from the information that was available, the nature and character of the movements of the shipment. You ask what investigation I made of Item "A", Def.'s Ex. "20",—"Consignments originating in Washington and specifically billed for export", and what I found concerning the character of the commerce.

(Plaintiff's counsel objected to the question as not the [fol. 280] best evidence and pure hearsay. The court reserved its ruling (St. 298-9). Whereupon, the witness testified:)

The particular commodities that we found were involved were flour, apples, lumber, poles and potatoes. In the case of the flour we found that generally shipments originated in the Spokane territory or—yes, so far as originating in Washington is concerned. The flour would be billed directly to a particular steamer and a dock and would indicate that it was destined to Yokohama or some Oriental point or some destination not located in the state of Washington. In the case of the apples, the move there generally, but subject to exception, in this respect, that the exceptions are to have the billing direct to a particular steamer and a particular dock, but the general practice was for the billing to indicate for export on the way bill or the record and the specific destination in the sense of the steamer to which shipment would be sent and the dock was placed with the yard office after the arrival of the apples at Interbay yard.

In the case of lumber, that, like the flour, is billed directly through to the steamer and to the dock generally, showing the destination to which it is going.

Poles generally consist either of cedar bolts used for pencils, slats or it may be logs which are shipped to the Orient and the potatoes generally are billed direct to particular boats destined to Honolulu or the Hawaiian Islands.

Referring to item "B", Def.'s Ex. "20", "Consignments originated in the state of Washington and billed to warehouses (St. 300), elevators", etc. You ask me to relate my investigation and what I discovered.

(Thereupon plaintiff objected to such testimony as to that particular item for the same reason urged against item "A", and stated that he wished it understood that he ob- [fol. 281] jected to all testimony of this nature connected with any portion of Ex. "20" on the same grounds already urged. Counsel for defendant stated that he was willing that counsel have that general objection, whereupon the court said: "That may be understood" (St. 301). The witness then testified:)

That consists of grain originating in the state of Washington and billed to the Hanford Street elecator or Northwest Docks and Elevator and the shipments to those particular docks are devoted to export business entirely. Now, I won't say entirely, because there are exceptions to the rule, of course, but I made an investigation through the operators of the Hanford Street elevator to determine for the season of '33 and '34 the exact movement of the grain out of Hanford Street elevator for that particular period to offshore or foreign destinations and the figure that I obtained indicated that percentage was 95.2% of the grain that went into the Hanford Street elevator moved out by vessels to these destinations and the balance, or 4.8% moved by rails to various destinations.

You ask what the general practice is of accumulating grain in those elevators (St. 301). (Plaintiff's Counsel: "I object to that on the same grounds urged." Defendant's counsel: "You don't need to make those statements. I understand you have an objection to every question.") Generally, in the purchase of grain, there are two classes of buyers. The one is the export broker and the other is the milling broker. Oftentimes you will find the two of them combined. That is, engaging in the same business. There happens to be at the Hanford Street elevators, that elevator is not now operated by the Port of Seattle, but it is operated by a company called "The Port of Seattle Elevator Company." I think that is the correct name. [fol. 282] The real operations are being conducted, or rather, I think, the ownership of that company is being conducted principally by the Pacific Continental Grain Company of Seattle. There are, over in the Hanford Street Elevator, the grains which may be owned by various export farmers including such as South and Company, the Farmers' National—I don't just definitely recall the name, but it is one of the large grain exporting companies in which the Government has indicated a strong interest and, in that matter, the grain is accumulated for the export in large quantities to vessels. It may move to those vessels from the elevator into the hold of the vessel itself or it may move both from the elevator and direct from cars into the vessel.

You ask whether the stream of commerce in grain (St. 302) conducted through those elevators flows out of the

state of Washington to other states or foreign destinations beyond or is a stream of commerce that is stopped at the Port of Seattle.

You ask where most of this grain originating in Washington is produced. It originates generally in Eastern Washington, I think exclusively. Eastern Washington is part of a large grain producing belt in the Inland Empire. You ask if there is a local market in the state of Washington for the great part of the grain that is produced in the Inland Empire or must it find its market beyond this state. (Objected to by plaintiff as immaterial. Court reserves its ruling.) The normal production of wheat in these United States is about eight hundred million bushels. The production in the Inland Empire is in the neighborhood of one hundred million. Or, in other words, that territory produces about one-eighth of the total production of the United States and necessarily indicating that the ter- [fol. 283] ritory itself is a large exporting territory in the sense of not being able to consume it.

You ask what investigation I made of Item "C", Def.'s Ex. "20", "Imports billed to Washington Stations from Washington ports." (objected to by plaintiff on same grounds theretofore urged as to "A" and "B". Objection overruled.) In the same manner as we examined the particular way bills of records. In this case we examined the copies of the way bills that were issued by the agent at the originating port. I might state, as an example, some of the character of the shipments that were developed upon that examination as being typical (St. 304). There was a shipment of tin plate which was brought to Seattle by the Calmore line, which line is engaged in intercoastal business from the Atlantic Seaboard to the Pacific coast. That was a billing which was transmitted to the G. N. Railway agent and indicated on its face that the final destination of the shipment was, as I recall it, either Mt. Vernon or Everett, Washington. I mean the ship's billing transmitted to the G. N. Agent. In the case of another shipment it would be about the same only the shipment would originate at an Oriental port and brought in by the American Mail Line or the N. Y. K. Line or any of the foreign lines engaged in the business in the Orient and likewise destined to a Washington point. If I recall correctly, one of them was to Wenatchee, Washington. Then there

was a third class and that is handled in this way, the billing showing the manner in which it was carried prior to its being put in the hands of the Seattle G. N. agent. Shipments are forwarded by car loading or forwarding companies. I have in mind the Universal Car Loading Company. That company engages in the forwarding business, [fol. 284] so called, which is to accumulate in the eastern United States a large part of miscellaneous less than carload shipments into a carload so as to obtain the benefit of carload rates and to ship those to a central point from which they are again sent to the final destination (St. 305). In those cases, shippers being familiar with the practice of these companies, forward their less than carload shipments to such forwarding companies and, with directions which clearly indicate the final destination. The packages, likewise, are marked for final destination.

Referring to Item "D", Def.'s Ex. "20", you ask me to state what it is and what I found. Item D consists of commodities such as grain, apples, dried beans and peas. It could include livestock, but we didn't find any record of livestock. Lumber, posts, poles and shingles. (Objected to by plaintiff as hearsay and not the best evidence. The objection was overruled.) This would include the revenues on shipments which are going into these transit stations for a later transit (St. 306) use. Grain, for example, may be either cleaned or milled and then reforwarded under the rates and tariffs that the railroads permit and the switching business is conducted on the basis of the through rates from the original point of origin to the final destination of the completed product. The same is true—well, not the same is true as to apples—but the apples are permitted storage in transit. The dry beans and peas are permitted for cleaning, sorting and storage. Lumber, ordinarily, is for milling or further finishing. Posts and poles may be for creosoting or for sorting. The same will apply to shingles. The revenue that is reported in item D is the revenue from the original point of origin to the transit station and the final destination of the shipments have not yet been determined. You ask if it is not a fact that in [fol. 285] the case of the grain, the final destination of the shipment has not yet been determined. Yes, and one might say the same as to the other commodities, but the limitations of the transit tariffs are such that, for example, on

lumber and other commodities the destination is bound to be a point outside of the state of Washington in order to obtain the benefit of the transit rate.

Referring to my investigation of Item "E", Def. Ex. "20". (Same objection by plaintiff and same ruling.) Mr. Brown has already testified to that (St. 307) and I should affirm the statement that he has made with respect to it.

You ask as to Item "C". (Same objection by plaintiff as to the other items, and the same ruling.) This shows that it consists, I might take an example that will tell the story better. Grain may be shipped from Chinook, Montana, a point on the G. N. Railroad, to Spokane, Washington, where it is sent to a flouring mill or to a cleaning plant for the purpose of milling or cleaning. Later on, and within the period of limitation that the tariff will permit, the shipment may move forward in the form of cleaned wheat or flour or feed from Spokane to a point, Wenatchee, Mt. Vernon or some other point in the state of Washington beyond Spokane. The revenue that is included in here is that revenue which was collected on the out-bound movement from Spokane to Wenatchee, or Mt. Vernon, as the case might be, which is the balance of the through rate from Chinook to the final destination, Mt. Vernon, for example, plus a transit charge made,—the transit privilege, having been exercised at Spokane, Washington (St. 308).

On cross-examination he further testified:

[fol. 286] The information with regard to Item "A" was obtained direct from the records in the G. N. Seattle dock office. There would not be bills of lading there, because the bills of lading would be at the originating points. You ask what kinds of records there are. They would be the expense bills, demurrage records, and other accounts that they kept. These are original books of entry in so far as they purport to cover a certain method of accounting operations. I got all of this information from these books personally. We did not check over every shipment, but we did check enough in the limited time that we had to verify what has been reported, and what we had checked were included in that terminology. Mr. Brown (St. 309) gave me the working papers from which I made the examination, and I checked up some of the shipments. I checked them

from the books of the company located in Seattle. I think we checked more than a full month out of the file.

(Plaintiff's counsel thereupon moved that the testimony be stricken as hearsay and not the best evidence, the company's books not being produced. The court reserved his ruling (St. 310). The witness then continued:)

I obtained my information as to Item "B" from the same sources—the books of the G. N. in Seattle. You ask if they are shown by way bills. Well, the way bills would be forwarded back to St. Paul. They would not be available now, because the way bills are always made at originating stations, and after having passed through, in their course of transportation to the destination, the agent merely subtracts those and then sends the final or the original way bill back to St. Paul, so he has just the abstracts. He does make from that way bill an expense bill, which shows all of the information as to matters of this character on its [fol. 287] face, and those are available. Those were in Seattle and were available to me and I examined them, and they are still there so far as I know. I did not check all of those $65,000 in items. That was handled in the same way as Item "A". You ask how this information in regard to what happens to the wheat at the Hanford Dock is shown (St. 311). That was a special investigation I made myself by going to the Pacific National Grain Company, and examining its records.

(Thereupon plaintiff's counsel moved that all the testimony in connection with item "B" be stricken on the same grounds urged as Item "A". The court reserved its ruling (St. 312).)

You ask if I got my information as to Item "C" from the G. N.'s books in Seattle. Yes, those were taken from the copies of the way bills and from the bills of lading. I took them from the way bills in Seattle. The bills of lading and the copies of the bills of lading, the first copies are retained by the agent at Seattle on the outbound movement that he has.

(Thereupon plaintiff's counsel moved that all the testimony of the witness with respect to item "C" on Ex. "20" be stricken. The court: "Same ruling" (St. 312). The witness then continued.)

You ask where I got the information with respect to Item "D". Only as to Seattle that we obtain that information, and we checked the original records that we had there, that would be the expense bills that they would still retain there. Those were all available to me in Seattle. I did not check them all. I think we checked a month's business. When a consignor registers a shipment in transit, he is not obliged to register the ultimate destination of the converted commodity. If he ships it within a definite time and to the particular stations that are covered by the tariff, then [fol. 288] he gets the benefit of the through rate plus the transit (St. 313) charge. Otherwise he would have to pay the local from the station to some other point, or to some point that he chooses to have it consigned. You ask if the shipment is not entirely within the consignor's control at all times, even though it is registered in transit. Yes, I think any shipment is within the control of the shipper except in a very few cases.

You ask what I studied in regard to Item "F". The only thing we had available would be the expense bills at Seattle on such shipments as were handled in that manner. That we checked were checked were in Seattle, yes, and typically of the way shipments from Spokane to Seattle, for instance. You say you are speaking of the records, and ask how we found out about them. Well, we went to the expense bills. Those also show the original point of origin, like in the example we took. It would show Chinook, Montana, as being the originating point. All those records were in Seattle (St. 314) when we examined them.

Plaintiff's counsel thereupon moved to strike all the testimony of the witness in regard to items "D", "E" and "F", as hearsay and not the best evidence, since the books of original entry were available and not introduced. The court reserved its ruling on such motion (St. 315).

[fol. 289] PLAINTIFF'S EXHIBIT "8"

Is a certified copy of "Information Report" dated February 20, 1934, filed with the Tax Commission February 26, 1934, and signed Geo. H. Hess, Jr., Comptroller, in which the estimated amount of average monthly business of the G. N. is estimated at $235,000.00. Attached to said report is a copy of a letter on the G. N. letter head signed

by Edwin C. Matthis, Attorney for Western Washington, and addressed to the State Tax Commission under date of February 24, 1934, which letter reads as follows:

"Enclosed please find Information Report and Business Tax Returns of the Great Northern Railway Company for the months of August, September, October, November and December, 1933. These returns are made under compulsion to avoid the imposition of penalties as threatened by the Commission, in accordance with the written protest hereto attached. The amount shown in these returns will undoubtedly require some correction. In the first place revenue received on account of business done for the State of Washington has not been eliminated, as authorized by the statute, and adjustment will be made accordingly, either in report to be filed for the month of January, 1934, or in the annual return to be filed for the taxable year 1933. Should the law under which this tax is imposed be finally upheld by the courts, the amount shown in these returns may require further correction by deducting items or amounts included which should have been omitted, or by adding items or amounts which should have been included. It is our understanding that the returns are filed subject to any such corrections, in the event the statute should finally be upheld and corrections become necessary."

There is also attached to such Report a form of protest signed by the G. N., by its attorneys, and designated:

Protest accompanying returns of Great Northern Railway Company for months of August, September, October, November and December, 1935, filed in pursuance of Chapter 191, Laws 1933 as amended."

[fol. 290]

DEFENDANT'S EXHIBIT "9"

Are certified copies of amended business Tax Returns made by the Great Northern Railway Company (by Geo. H. Hess, Jr., Comptroller), for each of the months of August to December, 1933, inclusive. Said returns are made under protest attached thereto. Such returns contain the following data:

	August to December, 1933, inclusive					
	August 1933	September 1933	October 1933	November 1933	December 1933	August 1933 to December1933
Gross Amount	$696,587.64	$709,954.07	$828,952.57	$679,034.06	$562,438.60	$3,476,766.94
Proceeds of sales or income derived wholly in interstate or foreign commerce	520,369.55	514,526.03	628,329.50	480,119.44	443,707.60	2,587,052.12
Proceeds of sales to the United States Government, its departments or institutions	6,155.23	3,007.58	3,709.16	3,925.47	994.34	17,791.78
Proceeds of sales to the State of Washington, its departments or institutions	1,606.26	2,794.39	993.15	373.42	266.00	6,033.22
Total amount of deductions	528,131.04	520,328.00	633,031.81	484,418.33	444,967.94	2,610,877.12
Taxable amount	168,256.60	189,626.07	195,920.76	194,615.73	117,470.66	865,889.82
Amount of tax	2,523.85	2,844.39	2,938.81	2,919.24	1,762.06	12,988.35

[fol. 291] DEFENDANT'S EXHIBIT "10"

Is Defendant's Amended Answers to Interrogatories. The answers to Interrogatories 1, 2, and 4 are the same as the answers first filed (Plff's Ex. "2"). The answer to Interrogatory 3 is the same as the answer first filed except that the following sentence is omitted:

"The Interstate Commerce Commission has prescribed no rules or method for reporting to the State of Washington the revenues and expenses within that state."

The amended answer to Interrogatory 5 is as follows:

(Interrogatory 5: "State by the following accounts and account numbers (or by such accounts and account numbers as the same appear upon your books of account) the total amount of the railway operating revenues received by you, or which have accrued, as a result of business transacted by you wholly within the state of Washington (a) during each of the months, August, 1933, to December, 1933, inclusive, and (b) from August 1st, 1933, to December 31st, 1933, inclusive:" (Plff's Ex. "1"))

Answer. "The railway operating revenues received or accrued from business transacted wholly within the State of Washington during the month of August, 1933, to December, 1933, inclusive, by accounts stated in Interrogatory (5), as developed by a recheck of the accounts kept by the Great Northern Railway Company are as follows:"

(Here follows a statement of said revenues for said months as shown by the tabulation set forth on the following page. Def.'s Ex. "10.")

[fols. 292–311]

(Def's. Ex. "10") (page 2)

Acct. No.	Name of Account	August to December, 1933, Inclusive				
		August 1933	September 1933	October 1933	November 1933	December 1933
101	Freight	$136,779.16	$158,573.46	$167,738.40	$162,928.28	$82,020.24
102	Passenger	26,188.61	26,644.50	21,237.88	25,506.58	31,423.63
103	Excess baggage	172.61	259.85	150.22	215.21	140.06
104	Sleeping car	.....	.....	.....	.....	.....
105	Parlor and chair car	356.58	262.20	261.45	215.40	311.75
106	Mail	.....	.....	.....	.....	.....
107	Express	.....	.....	.....	.....	.....
108	Other passenger train	130.61	114.91	105.39	210.99	174.24
109	Milk	1,076.74	777.42	813.08	498.68	487.20
110	Switching	3,552.29	2,993.73	5,614.34	5,040.59	2,913.54
111	Special train service	.....	.....	.....	.....	.....
112	Other freight train	.....	.....	.....	.....	.....
	Total	$168,256.60	$189,626.07	$195,920.76	$194,615.73	$117,470.66

Following the foregoing tabulations, is the following:

"The corrected figures are largely the result of an analysis and examination of Account 101 and the elimination of revenues received from interstate and foreign commerce and from transactions with the United States and the State of Washington. The revenues received and reported to the Interstate Commerce Commission under the other account numbers set forth in this interrogatory, but under which no revenue is shown in this answer, are unsegregated revenues received either partially or entirely from interstate commerce."

[fol. 312] DEFENDANT'S EXHIBIT "12"

Is a card 10 by 5 inches in size designated "Switch Foreman's Work Report" upon which is printed what is termed "Code of Engine Service," describing by numbers various services rendered by switching engines. The card also has blank spaces for the entry of data as to Engine No., Date, Time Worked, Switch Foreman, No. of Brakemen, Time, from — to —, Work done, Cars Handled, Loads —, Empties —, and Remarks.

DEFENDANT'S EXHIBIT "13"

Is a card 10 by 5 inches in size designated "Great Northern Railway Company Yard Movements, Seattle, Wash.," upon which is printed what is termed "Code of Yard Movements," describing by numbers various services rendered by yard engines. The card also has blank spaces for the entry of data as to Engine No., Date, Time Worked, Switch Foreman, No. of Brakemen, Switch Crew Time, From — to —, Work done, Cars handled, Loads —, Empties —, and Remarks.

[fol. 313] DEFENDANT'S EXHIBITS FOR IDENTIFICATION "14" TO "16"

These identifications consisted of packages said by defendant's counsel to contain data connected with the special studies made by defendant. These were later withdrawn with the consent of plaintiff's counsel (St. 423).

[fol. 314] DEFENDANT'S EXHIBIT "17"

Consists of 13 set-ups in connection with the special study made by defendant for the week ended March 9, 1932, made for the purpose of determining the amount in which the annual revenues and expenses would be reduced by a discontinuance of defendant's intrastate business. Since the accuracy of the ultimate figures resulting from these calculations are not disputed by plaintiff, this exhibit is omitted.

[fol. 315] DEFENDANT'S EXHIBIT "18"

Is a copy of the testimony of C. R. Lonergan and T. M. Jenner called as witnesses for the defendant in state of Washington vs. Northern Pacific Railway Company, which testimony is in substance, as follows:

C. R. LONERGAN, called and sworn as a witness on behalf of defendant, testified as follows:

I am traffic expert for the D. P. W. the National Carriers including the N. P. and G. N. and other lines have now an application pending before the I. C. C. for an increased rate. There has been an application filed for an increase in the state of Washington with the Department, and that is pending before the Department. You ask if there is any way of knowing when that application can be heard. I think the carriers request that it be not heard until after the I. C. C. makes its findings, because the same increase is asked for of the local rates as is asked for the Interstate rates. What that increase will be cannot be known until the I. C. C. acts. There is no chance of bringing the state case to trial before that. There is no way of knowing when the I. C. C. will finally make its order. It will probably be some time early next year, because the hearing extends until December.

On cross-examination he further testified as follows:

I am familiar with the proceedings taken by the railroad companies in that case that I referred to in my testimony, which is Ex Parte No. 115. You ask if the railroad companies raised in that case the rates should be increased by reason of the imposition of this occupational tax. I don't [fol. 316] believe that was one of the reasons they gave. I might say this, that at the hearing the carriers put in their case in Washington. It was put in starting, I think, October 1st, 1934. You ask if they introduced evidence in regard to what their occupational tax would be, at that hearing. I did not hear any. I was there. They stated what their entire expenses were. I did not hear anything about them including the occupational tax. They included their item of taxes in their statements of revenues and expenses. In putting in their evidence they did not follow the classification that is detailed in their reports, in the I. C. C. reports. Most of the exhibits were composite exhibits covering

western railroads and eastern railroads and southern railroads. It was not any separate showing made by any one railroad. The N. P. and G. N. figures were included in this northwestern group. You ask if any particular railroad had the right to make a separate showing if it so desired. Well, it was not done that way.

(Counsel for defendant thereupon stated that there was no occupational tax included, because none had ever been levied against the railroad, much less collected, and we don't think any will ever be collected, either. So it certainly was not in the showing. Whereupon the witness continued:)

I do not know that the occupational tax was in the showing made by the northwestern railroads in said hearing. These were the general figures of expenses of revenues that I had reference to. You ask if the I. C. C. hearing relates to local rates in the state of Washington. It includes rates beyond 220 miles in length on merchandise, and in some cases it includes rates for all distances. But generally speaking the application is made up so as to exclude any advances in rates where truck competition is involved for distances up to 220 miles. You ask if there is any proceed-
[fol. 317] ing for an increase of rates brought by the G. N. or N. P. other than the one before the I. C. C. As I testified here, the carriers also filed an application with the D. P. W., a similar application. In fact it is identical with the I. C. C. application, and they are requesting the Department to take no action, not call a hearing or do anything about it until the matter of interstate rates is definitely settled by the I. C. C. so that it is pending. It was filed in September, 1934. You ask whether in that application the railroads state any claim for this occupational tax. No.

T. M. JENNER, called and sworn as a witness on behalf of defendants, testified as follows:

I am a member of the Tax Commission. Exhibit "D" attached to the Answer appears to be a copy of Senate Bill No. 18. I attended a meeting before the Legislative Committee at which this bill was up for consideration. I don't recall whether it was the Revenue and Taxation Committee

or not. Mr. Sharpe attended that committee meeting and urged that the Committee favorably report out this Senate Bill 18. The bill never got to the floor of the House as far as I know. I don't know whether it died in the original committee or the Rules Committee.

On cross-examination he further testified as follows:

Mr. da Ponte, Mr. Balmer and other railroad attorneys were present at the committee hearings on said Senate Bill 18, and quite strenuously opposed the reporting of the bill favorably by the Committee.

[fol. 318] (It was admitted by plaintiff's counsel that Exhibit "B" attached to the Answer is a copy of Senate Bill "18" referred to in the foregoing testimony of T. M. Jenner, and that Exhibit "A" attached to the Answer is a copy of the first supplemental findings and order of the D. P. W. referred to in the foregoing testimony of Mr. Lonergan. St. 144.)

[fol. 319] DEFENDANT'S EXHIBIT FOR IDENTIFICATION "18"

This identification consisted of a package said by defendant's counsel to contain data connected with the special studies made by defendant. This was later withdrawn with the consent of plaintiff's counsel (St. 423).

DEFENDANT'S EXHIBIT "19"

Purports to be a statement on behalf of the G. N. in the matter of the assessment of the G. N.'s railroad operating property for the year 1933 adressed to the State Board of Equalization of the State of Washington. Since this exhibit is not deemed material, the same is omitted.

[fol. 320] DEF.'s EX. "20"

Great Northern Railway Company

Washington—Calendar Year 1933

Revenues eliminated as applicable to interstate and Foreign Commerce as reported in amended answers to interrogatories

Account		Total applicable	
		August 1, '33 to Dec. 31, 1933:	To year 1933
(101)—Freight			
(a) Consignments originating in Washington and specifically billed for export	$92,580		
(b) Consignments originating in Washington and billed to warehouses and elevators, practically all of which would be exported or transported by water and (or) rail to other states	65,558		
(c) All other imports billed to Washington stations from Washington ports	8,033		
(d) The initial local state revenue collected for shipments into transit stations	308,896		
(e) Absorbed switching	14,997		
(f) Milling in transit adjustments on grain originating outside of Washington and the products reshipped to points in Washington	41,055	531,119	1,097,178
(110)—Switching			
Switching revenue received on shipments pertaining to (c) and (d) under Account 101	.....	1,820	3,610
(143)—Miscellaneous			
Wharfage	.....	.....	25,000
Total		$532,939	$1,125,788

[fol. 321] Plaintiff's Evidence in Rebuttal

C. A. MANSCHRECK, called and sworn as a witness on behalf of plaintiff, testified as follows:

My business is supervisor of valuations, State Tax Commission. My duties in connection with that work are: assisting the Commission in arriving at valuations for taxation of public utilities, and so forth, by the Tax Commission. I am familiar with the G. N.'s annual reports to the D. P. W. and Tax Commission and with the method of accounting used in making such reports. I have been engaged in my present line of work with the Tax Commis-

sion since May, 1925. Prior to my employment with the Tax Commission I was assistant to the Director of the Department of Efficiency in setting up various accounting methods in the State Departments. I set up the accounts of the Income Tax Law, also set up the present system of accounting used in the Business (St. 331) Tax or Occoupation Tax. Prior to my employment by the Department of Efficiency, from June, 1916, to August of 1920 I was Chief Paymaster of the United States Shipping Board in charge of supplies and accounts. From 1909 to 1916 I was auditor of disbursements of the City of Seattle in the Comptroller's office.

I have examined the exhibit introduced in evidence in this case known as G. N. Exhibit No. "11". I have made a study of that exhibit as much as I can. I make my study in connection with work sheets furnished by Mr. Burn and the reports submitted to the D. P. W. I received Exhibit "11" about 5:00 Monday evening and this is Friday (St. 332). I got the work sheets on Wednesday. I prepared certain studys or set-ups in connection with G. N. Exhibit "11". I [fol. 322] prepared ~~all of~~ plaintiff's Exhibits "21", to "36" inclusive (St. 333) after making comparisons as to the work sheets and the figures contained in the reports to the D. P. W.

The purpose of Plff's. Ex. "21" is to restate the operating expenses applicable to intrastate operations, freight and passenger. Plff.'s Exs. "21" to "24" relate to the figures in Def.'s Exs. "11" pp. "1" to "27". You ask me to explain Plff's. Ex. "21", and how I arrived at the figures therein set forth (St. 334). In Item "1-A", where is shown the total freight revenue, account 101, intrastate, that figure was taken from G. N. Exhibit "11", page 11, account 101 freight. "1-B" was taken from G. N. Exhibit "11", page 2, line 8. The operating ratio is set forth in line "1-C", and is line "B" divided by line "A". Line "1-D" is the switching revenue assigned to account 110 as shown by Def. Ex. "11", p. 11. To this I applied the operating ratio and arrived at the figure $21,547 shown in line "1-E" (St. 335). This is in a measure a restatement of page 7, Def. Ex. "11". In computing that item I applied this operating ratio only to switching revenue, while on page 7, Def. Ex. "11" the ratio was applied to all the accounts other than account 101 as shown on Exhibit "11" page 11. You

ask me why I do that. Well, from my study of Def.'s Ex. "11" and the work sheets I find that there was no deduction made for maintenance of way and structure on the 3-year average. All of the expenses as charged for those 3 years were used in the study. This applies also to maintenance of equipment, traffic and transportation. In using all the figures contained or charged to expenses and used for the purpose of finding the operating ratio of 101, it is my contention that the expenses were distributed when they were [fol. 323] so allocated and the services performed by all of the employees of the company in freight services were engaged—or any part of the service was for the purpose of performing duties in connection with these various accounts, such as 111 special (St. 336) train, 112 through freight train, 135 storage of freight, 137 demurrage, 139 telegraph and telephone, 142 rents of buildings and other property, and 143 miscellaneous. In reporting to the I. C. C. and the D. P. W. the carrier itemized its various expenses connected with railroad operations by accounts. You ask whether the G. N. in making it showing in Def.'s Ex. "11" took into account each and all of these railway operating expenses that are used in connection with making these reports, and if not, which ones were not taken into consideration. I could not find that the amount shown in Account 446 on page 707, line 229, had been used in the calculations. On the basis of the average, the average of 3 years as used in the other computations, 1931 expenses are $20,000 plus, and in 1932 $9,000 plus, and in 1933 $6,000 plus, or an average of the 3 years of $12,342. Now in the study made and the figures used the defendant eliminated from transportation expense the direct yard and direct road costs which were substituted by the costs arrived at from the study made of the 2 different periods (St. 337). The actual items were substituted in the study figures for the reported items. It used those in connection with the terminal cost study and the line haul. You ask if the account which I said was not considered, related to any of the revenue included in any of the revenue accounts other than 101, in Def.'s Ex. "11". Well, not having the detail of the income that was credited to this account 143, I looked up the I. C. C. classification to see what these 2 accounts [fol. 324] should include, and not having the detail I can-

not answer whether the expense was incident to any of the revenue items or not.

Again referring to Plff.'s Ex. "21", the passenger expense in line "2-A", is the figure found by the defendant in its calculations as $888,000 plus. Then, to find the total railway operating expenses applicable to intrastate operations, I add the 3 items in the last column.

Referring to Plff.'s Ex. "22", you ask me to explain, first, how I apportioned (St. 338) the taxes. I first apportioned between freight and passenger, both interstate and intrastate, on the basis of car and locomotive miles, and arrived at the proportions shown in lines "D" and "E". Then I apportioned the freight and passenger as applied to intrastate business only. I found the total amount of the taxes payable by the G. N. by letter received the G. N. attorney, Plff.'s Ex. "37" (St. 339).

(Plff.'s Ex. "37" was thereupon received in evidence (St. 339). The witness then continued:)

The figure contained on Line "F" was taken from this (St. 339) letter referred to as Exhibit "37", $1,257,860 to which I had added Federal taxes as apportioned by the G. N. Exhibit "11", page 9, line 5-B of $9,593, which gave me a total of $1,260,453, from which I deducted the amount of taxes contributed by tenant roads in the sum of $12,556, leaving a balance of $1,247,897.

I first determined what I should apportion to freight, interstate and intrastate (St. 340). I apportioned 20.2% of the taxes apportionable to freight service, to intrastate freight service, on a relative car mileage basis based on the test period as found in Def.'s Ex. "11", page 4 (St. 341). The net Washington taxes chargeable to freight operations was $997,883. The net tax chargeable to passenger was [fol. 325] $250,095. The amount was arrived at through computing the item line "E" multiplied by line "H" and the item on line "D" multipled by the item on line "H". These are all explained in the exhibit. The method of arriving at the relation between the intrastate car miles and the total interstate and intrastate is shown in "K". And applying that ratio of 20.2% to the amount appearing in line "I" I have the amount appearing in line "L". I apportioned the tax chargeable to intrastate traffic in the relation of the intrastate revenue to the intra and interstate

revenue, and found that to be the fraction set forth in line "O". To find the tax apportionable to intrastate passenger traffic, I multiplied that fraction in line "O" by the amount in line "J", and arrived at the figure in line "P", as apportionable to intrastate passenger service. I then added line "P" and "I" to get the total of $291,181. I then added the license tax payable by the G. N. as shown in line "R" and got the final total shown in line "S". I considered this a proper method of apportioning the tax from the available data. You ask whether I consider it the most fair method of apportioning taxes from the available data. Well, to my mind it shows the use made of the property, both intrastate and interstate, and the only way the tax could be apportioned (St. 343).

The purpose of Plff.'s Ex. "23" is to show the apportionment of joint facility rents chargeable to Washington operations. The exhibit is made on the assumption that the intrastate freight traffic for 1933 was the amount reported to the D. P. W. You ask me to show how I made the opportionment. I requested from Mr. Balmer the car mileage made on the G. N. Seattle-Portland line as to freight and passenger and, in reply to that request, the mileage as [fol. 326] shown in Item "A" was phoned to our office yesterday. The percentage or the ratio of passenger car miles to the total freight and passenger car miles is as shown in line B, the ratio of the freight car miles to the total freight and passenger miles is as shown in line "C". The joint facilities rent net debit shown in line "D" was taken from the G. N.'s Ex. "11", page "9", as indicated. The item of line "E" was the application of the ratio in line "C" to the amount shown in line "D". That is for freight. The passenger prportion in (St. 344) line "F" is the ratio shown in line "B" to the total amount shown in line "D". You ask why I took the result of operations of the Seattle-Portland line in making this apportionment. Because that is the largest property rented by the G. N.—joint facilities property—and carrying a heavier traffic. I had no corresponding material available as to any of the other properties which the G. N. rented. I found the total car miles, the total passenger car miles, and the total freight car miles operated by the G. N. over the Seattle-Portland line for 1933. And I apportioned the joint facilities rents net debit between freight and passenger service according to the rela-

tive passenger and freight car miles. I apportioned as between intrastate freight and interstate freight on the (St. 345) relation of intrastate net ton miles to the total intrastate and interstate, as testified to by Mr. Burn, and I found that the proportion was 20.84, and applied that percentage to the total of the tax assigned to freight, which produces the item appearing in line "H". I apportioned the passenger proportion according to the relative revenues from intrastate and interstate business taken from Def.'s Ex. "11" on page 11. That fraction is shown in line "K" to be 35.83%. I applied that percentage to the total passenger, intrastate and interstate, in line "F" (St. 346) and [fol. 327] reached the figure in line "L". In line "M" is shown the total to be apportioned. You ask my opinion as to this method of apportionment, considering the limitations of the material and data that I had before me. Well, it was the only way that I could work it out with the limited information that I had. I think it is the fair way (St. 347).

Plff.'s Ex. "24" is a restatement of page 1 of Def.'s Ex. "11," and is also a summary of Plff.'s Exs. "21" to "23." The items are I think, self-explanatory and refer to the pages where the data is found. The railway operating income in line 5 compares with line five in Def.'s Ex. "11," page "1."

The purpose of Plff.'s Ex. "25" is to show what amount would be deducted from railway operating expenses as shown in plaintiff's Ex. "4" if the item of expense of pensions were eliminated (St. 348). Of course that reduction would apply to the ultimate figure reached by line "8" of Ex. "24." It would correct all the way through where corrections are necessary. I think these figures in Plff.'s Ex. "25" are self-explanatory. The figures on Plff.'s Exs. "24" and "29" are in no way affected by my showing in Plff.'s Ex. "25" relating to pensions (St. 350).

Plff.'s Exs. "26" to "29" are all made in the same manner as exhibits "21" to "24" and are companion statements to these exhibits, taking into consideration the claimed interstate foreign commerce (St. 349). My method of computation is shown on each exhibit and all computations are correct to the best of my knowledge.

Plff.'s Ex. "27," I think, is in the main self-explanatory.

Referring to Item "D" you ask why I didn't use relative ton miles and passenger miles as applied to this new calculations by which defendant transfers a portion of its [fol. 328] intrastate traffic over to interstate (St. 350). For the reason as stated in the note there, it was not furnished to us by the defendant. (Questions by Defendant's counsel.) It wasn't asked for from the G. N. by me. (Questions by plaintiff's counsel.) It is not shown in the report to the D. P. W., or any exhibit offered in this case that I know of. That is also true of the starred item, line "D," in Plff.'s Ex. "28" (St. 351).

Plff.'s Ex. "29" is a recap and for the first 9 lines, corresponds to the showing made by the G. N. by the defendant in G. N.'s Ex. "11," page "A" (St. 351). I did not consider that cost of reproduction was a factor to be used in this case. Neither did I consider that equipment rent or joint facilities rent were factors to be used, and merely made those calculations because they were shown in the defendant's exhibit.

Plff.'s Ex. "30" was made to show the percentage by which the revenue per ton freight intrastate exceeds the per ton revenue on interstate. That is self-explanatory. Line "I" shows that the proportion is 132 plus per cent. In other words, the G. N. makes more than twice as much per ton mile from its intrastate than from its interstate business. The excess is 132% (St. 352).

Plff.'s Ex. "31" is intended to show the revenue per passenger (St. 352) mile on interstate and intrastate, and the percentage of difference between the two. I find in Line "I" that the revenue per revenue passenger mile on intrastate business exceeds the revenue per passenger mile on interstate by 23% (St. 353).

Plff.'s Exs. "34" and "35" are work sheets to show the methods that I used in arriving at the millages and the basic figure of 13.939 on exhibit "34" and 15.414 on exhibit "35" are used in the work sheet, which is exhibit "36." [fol. 329] You ask where it is on the work sheet. On line 19, Plff.'s Ex. "36" appears 13.939 and on line 23 appears 15.414 (St. 354). (Question by defendant's counsel.) With the exception that I have added a couple of work sheets, Ex.'s "32" to "36" are identical with exhibits introduced in the N. P. case. They were made for all four roads. (Questions by Plaintiff's counsel.) Plff.'s Ex. "32" in the

G. N. case is the same as Plff.'s Ex. "43" in the N. P. case; Plff.'s Ex. "33" in the G. N. case is the same as Plff.'s Ex. "44" in the N. P. case. All of my testimony in the N. P. case relating to exhibit "43" likewise applies in the present case to Plff.'s Ex. "32" and all of my testimony with respect to Plff.'s Ex. "44" in the N. P. case applies likewise to Plff.'s Ex. "33" in the present case (St. 355). My testimony in regard to Plff.'s Ex. "43" in the N. P. case applies likewise to Plff.'s Ex. "36" in the present case.

(It was thereupon agreed that the testimony of Mr. Manschreck including the cross-examination relating to those exhibits, might be lifted from the N. P case and placed in the present case (St. 356). Such testimony is as follows:)

Plaintiff's Ex. "43" is a comparison of aggregate taxes payable by certain interstate railroad companies under revenue laws in force prior and subsequent to 40-mill and other limitation acts, comparing the year 1932 with 1933. 1932 was the last year that there was unlimited millage. After that the 40-mill tax law and other limitation acts applied. The comparison is made for the transcontinental lines, the N. P. G. N. O. W. and Milwaukee (St. 356a). The first line "A" shows the total ad valorem taxes levied in 1932 payable in 1933 as to these four lines and the total. There were changes in valuations in 1933 as compared with 1932, and there was also a settlement of the N. P. tax case. [fol. 330] And so that there had to be an adjustment according to equalized values. In line "B-1" is shown the taxes, the valuations or rather the equalized assessed valuations for each of the roads for the year 1932, and in line "B-2" I show the same for the year 1933 as to each road (St. 356b). In line "C" I show the ratio of the one to the other for the purpose of harmonizing the showing as to 1932 with 1933. So that I find in line "D" the total ad valorem taxes that would have been payable for 1933 on the basis of the 1932 millage rates, by multiplying line "A" by line "C." In line "E" I show the total ad valorem taxes payable for 1933 levied under 40-mill and other limitation acts under the laws in force in 1933. Those were the actual taxes levied, and not the accrued taxes (St. 356c). Line "F" shows the total amount of occupational taxes payable for 1933 had the same been imposed for that entire

year. That was computed on the basis of 1½%, applied to the railway freight revenues less the mail revenues, intrastate only, as reported to the Tax Commission on page 22 of the Tax Commission report. That would be the maximum amount of occupational tax that could possibly be payable by these various companies for that year, after excluding mail revenue. Line "G" is the total of lines "E" and "F," being the sum of the occupational tax if it had been imposed for the whole of the year 1933, and the ad valorem (St. 356d) taxes which were actually imposed for the year 1933. In line "H" I attempt to show the net savings in total taxes ad valorem and occupational, which the named companies would thus have realized in 1933 under this new tax plan resulting from the enactment of these new limitation acts, and that was based on the application of the occupational tax to the full year's business. I had to use that in order to make a comparable showing, because I did not have the revenues by months. [fol. 331] To find this net savings I deducted the figures in line "D" from the figure in line "G."

What I have stated heretofore relates to all taxes, state, county and all ad valorem taxes paid by the company. I now come to what taxes, if any, have been paid so far as taxes imposed for state purposes alone are concerned. Line "I" shows the ad valorem taxes for state purposes which would have been levied for 1933 under revenue laws in force prior to the 40-mill and other limitation acts. You ask how I found that. Well, each year I am required to make up a statement to the State Board of Equalization showing amounts required for the various funds to be levied by the State Board of Equalization for the tax rolls of that year, and the millage requirements were used there and applied to the valuations to produce the amount shown on line "I." The "other limitation acts" referred to in the exhibit is the Showalter Bill which has a limitation of 5 mills on the state school fund levy. I took that into consideration. Line "J" shows the actual amount levied under the 40-mill and other limitation acts. That is the actual amount I did levy (St. 356e). Line "K" is a mere repetition of line "F." Line "L" shows the total ad valorem taxes for state purposes for 1933 as actually imposed, plus the total amount of occupational taxes which would have been payable for the whole year 1933 if the law had been in force during all

of that period. Then in line "M" I show the net savings in total taxes for state purposes alone, both ad valorem and occupational, which the named companies would have realized in 1933 under the new tax plan, and I reach that figure by deducting line "I" from line "L" (St. 356f).

Plaintiff's Ex. "44" purports to be a comparison of aggregate taxes payable by certain interstate railway com- [fol. 332] panies under revenue laws in force prior and subsequent to the 40-mill and other limitation acts. This is 1932 as compared with 1934, as to the same railroads covered in Ex. "43." It is made in the same manner as Ex. "43" (St. 356g). For the purpose of computing occupational taxes I have assumed that the taxable income of these various roads would be the same for 1934 as for the whole of the year 1933.

Plaintiff's Ex. "45" is a work sheet showing how the figures on Ex.s "43" and "44" were computed and applied. The exhibit is self-explanatory. All statements on it are correct (St. 356h).

You ask if it is not true that the 40-mill law reducing real and personal property taxes in the state did not confer any peculiar benefits upon railroads any more than it did on any other property. No, I don't think that is true (St. 356i). You ask what peculiar benefits it conferred on railroads. I think the allocation of real estate values as found by the State Board of Equalization to taxing districts on a millage basis, as provided by the acts for distribution of railroad valuation throws a lesser value in the high levy taxing district than it does in the low taxing district, and that the valuations so allocated, for instance, to the city of Seattle or the county of King, with large terminals, does not reflect or does not correspond to the actual value of other real property within the city, and to the extent of that particular taxing district the railroad property would bear a lesser (St. 356j) burden than other real estate in that district. The law provides for the allocation, but not the 40-mill law. Such benefit, if any, existed before there was any 40-mill limit. You ask if the same method of allocation was followed as is followed now. That method of allocation is provided by some other statute. There is no occupational tax levied directly upon real property (St. 356k).

On redirect examination he further testified as follows:

[fol. 333] The 40-mill limit law is not an absolute limit of all taxes to 40 mills. The tax levies range all the way from the thirties up to, I think, the highest was in Gray's Harbor, 106 or 104 mills on the assessed valuation. You ask how it happens that you can levy more than 40 mills. Due to the 40-mill tax law, providing for bonded indebtedness, warrant indebtedness and interest retirement, I know there is a heavy bonded indebtedness in certain cities and taxing districts. I don't know the amount. The full amount of levy for those purposes, so far as the property in those big centers is concerned, is unaffected by the 40-mill limit, so far as the levies for the payment of these bonds and the retirement of these bonds is concerned (St. 3561). The N. P. would not profit any more now than it did previous to the 40-mill limit law. I mean by that that the allocation of the property valuations for instance of the N. P. is made on the same basis as it was previously made, and that as long as the Act is in effect we could continue to allocate that value to taxing districts irrespective of the actual value of the property within the district, such as I mean in Seattle, for instance, were we allocate on a mileage basis. The same value or the same rate per mile is allocated, for instance, to—oh, we will take Kittitas County or any other county through which the main line runs, and it gives no effect to the intensive terminal properties within the city or county or wherever the terminal properties are located. I think that business property, hotels and apartment houses and things of that kind are paying proportionately more on the value of their property within the cities than the railroad companies are paying (St. 356m).

(Question by defendant's counsel.) You ask if I mean, according to my idea of the value of railroad property. [fol. 334] Well, as fixed by the State Board of Equalization (St. 346n).

On cross-examination by defendant's attorney, he further testified as follows:

You ask what study I have given to railroad cost accounting. Only in so far as related to matters of ad valorem taxation in the state of Washington, and the study I made during the past 3 days in going over the G. N. reports to the D. P. W. and the I. C. C. (St.356). Up to that

time my study of railroad statistics was practically confined to the question of ad valorem taxation. You ask if that question is not largely a study of values of the property rather than a study of the operating results. No, I go over the operating results quite thoroughly, take all the figures that are reported and my study that is made for the purpose of ad valorem valuation covers all those figures. It covers relative car mileage, relative ton mileage, relative passenger millage, relative revenues and relative expense. It covers very largely a comparison of the units of those things in the State compared to the units of the system as a whole, as reported to the Tax Commission and D. P. W. (Defendant's counsel admits that the witness has made studies of those reports.) (St. 357). You ask if I have ever had the responsibility of studying railroad statistics for the purpose of determining whether particular services were compensatory. No, sir, I have never studies those—well, I might qualify that statement of my answer there by saying that I have gone over some of the records that have been introduced in various rate cases before the D. P. W. if that is what you refer to. I have never prepared such studies myself. I realize the operations of a railway company such as the G. N. Railway in a state as large as the State of Washington involves an infinite variety of service. You ask if I realize that that [fol. 335] infinite variety of service is not conducted at the same time on the same train with the same employees to a very large extent. Well, I don't know what you refer to, Mr. Balmer, in that you have in mind local trains, for instance, local freight trains. It is probably true that high class merchandise may be moved in the same train in which cars of manure are being hauled (St. 358). The smaller circuses may be moved in the same train as silk hats. You ask if I could carry on those extreme comparisons for half a day and go over the whole classification of the revenue business which the railway company is hauling. The hauls are of different lengths, and I would say that the services themselves to some extent are different. Some shipments require icing, heating and expedited service, while there is a large amount of dead freight that does not require any of those special services (St. 359). I think that nevertheless, the several classes of service might all be handled in the same train at the same time, by the same employees, over the same railroad. You ask if I

realize the difficulty and flexibility of ascertaining the cost of the individual services that are all being performed together. Well, I can't answer that question, because I am not familiar with your general office practice, what duties are performed by these various employees within your office. I would say that it might be hard work to do it. It is not impossible to be done, any more than, I say, making a study of line hauls, switching or any other such related service as has been made in these various rate hearings. You say "not impossible, but a very complex study." Yes, I imagine it would be. The cost of carrying freight depends very largely upon the volume of the traffic. Ordinarily the cost per unit of moving freight decreases with volume (St. 360). That is because many of the expenses are constant. The overhead is practically constant. You ask if, below the overhead, there are not a great many ex- [fol. 336] penses though not utterly constant, nevertheless do not increase in proportion to increased traffic. That is true in many respects. You ask if it costs twice as much to move a train with 50 cars as it does with 25 cars, over the same railroad. No, because you have the same percentage of overhead applied to the 50 cars as you would to the train of 25. Your staff of employees and yard crews and train crews may not have been increased due to the additional 25 cars. Your train expenses, switching expenses and other expenses would be increased, such as I have in mind, as for instance fuel, water, repairs to equipment and such, because you have twice the amount of equipment and probably twice the amount of tonnage to pull over the rails, so I think your costs would increase proportionately. It would cost more to haul 50 cars than it would 25 cars. You ask if it would cost twice as much. No, I would not say that it would (St. 361).

You ask if I have ever made a study of the proportion of maintenance of way costs which varies in proportion to the traffic. Well, there are certain properties that would depreciate to the extent of needed repairs, if you did not move a single train over the line. So I don't know how you could make a comparison as to the increase or decrease in the traffic. I might answer your question partly by saying that the increased traffic would cost increased maintenance of equipment and also right-of-way, that is rails, ties and such items—because they were more heavily used. Consequently your maintenance on that class of

property would increase to some extent, but your maintenance on buildings would go on just the same, you would have to maintain those buildings whether you had a ton of freight in them or a thousand tons. Even the ties would rot and wear out on the railroad even though no trains were run over the line (St. 362). I am not familiar with all of the reports gotten out by the I. C. C. You ask if I ques- [fol. 337] tion the statement of the I. C. C. that only about one-third of the cost of maintenance of way varies with the volume of traffic. Well, I can't answer that question directly. I think it depends on the case involved. You ask whether in some cases it would be true. It may and it may not be true. I don't know. I would not say that it would not be true in any case. I say I don't know. The total cost of moving traffic on a railroad is made up of both terminal costs and line haul costs. Not only that, but you have to add to that a certain proportion of your overhead, if you were making a cost study. So far as the operating costs are concerned, a division (St. 363) of the main items might be made between terminal costs and line haul costs. You say that by terminal costs you mean the expense of originating the freight at the point where the shipment starts, and the expense of delivering the freight at the point where the shipment ends; that is, the expenses of picking up and delivering the freight at the termini, and you ask, if the traffic is the same, those terminal costs would vary with the length of the haul. I don't think they would. The line haul costs, however, would vary with the length of the haul. The railroads in the State of Washington are composed of both main line and branches. And that is true of the G. N. You ask if the traffic contributed by the branches to the main (St. 364) line reduces the cost per unit of moving freight on the main line, assuming it to be main line freight after it leaves the branches. Yes, it is reduced proportionately by the volume; that is, certain expenses are reduced proportionately. That is to a great extent true because of the general principle, that the cost per unit of moving traffic on a railroad reduces with increased volume.

A car mile means one car moved one mile, a ton mile means one ton moved one mile, and a passenger mile, a [fol. 338] passenger traveling one mile.

You ask whether, in determining whether a branch of a railroad is profitable, consideration should be given not

only to the (St. 365) expense of maintaining an operating branch, but also the reduction of main line expense resulting from the business contributed by the branch. Why, you would have to take all factors into consideration, whether the branch line originated and terminated its own freight or whether it received freight from main line or delivered freight to main line, you would have to give consideration to all items in a cost study. If the business of the branch moved partly over the branch and partly over the main line I would not, in determining whether the branch was profitable, consider only the expenses incurred there. You ask if I would not also consider the reduction of expense per unit of traffic that resulted from the traffic contributed by the branch to the main line. Well, there are certain costs that are allocated or distributed to all elements of service, such as branch lines and main lines and consideration would have to be given to those costs to determine whether those branch lines were either making or losing money (St. 366). You ask if I were attempting to determine the cost of moving traffic whose haul consists of a movement partly over a branch line and partly over a main line I would stop when I had ascertained the expense of moving it on the branch line, or would I carry my study on to determine the expense of moving it over the main line. No, I would not carry it over the main line. You ask if I think I could ascertain the true cost of hauling freight partly over a branch and partly over a main line by investigating alone the question of the expense of hauling it on the branch. Yes, you could determine that by allocating revenues to the branch line just the [fol. 339] same as you allocate to other lines. You ask what proportion I would allocate to the branch line. I don't know. I am not making a study of a branch line as to profits or losses. You ask if, in my exhibits, I have done that to any extent. No. I have allocated the joint facility rents of the (St. 367) G. N.'s Seattle-Portland line entirely to the traffic of that line. I don't think it is any more an item of expense than your interest on your bonds or funded debt. You ask if the G. N. could get traffic for its main line or other lines in Washington from the Seattle-Portland line without paying these rentals (St. 368). Why, if you did not rent it you would have to build it, and then you would have to pay interest on your bonds, the money that you borrowed to build the line. You ask if in that case the G. N.

alone would not have to bear the interest on the entire investment in the line. If it were solely used by the G. N. Whereas that line is used by three parties, and the capital charges and expenses are divided between the three. There is not only a lower capital cost, but a lower expense to each, per unit of traffic, to each of the three lines operating that railroad that there would be if each of them owned a similar railroad itself. I know that the traffic of the G. N. which flows to and from the Portland branch also moves over to other parts of its lines in the State of Washington, and in that way increases the volume of the traffic that is moved on its other lines. You ask if it does not thereby reduce the unit cost of moving all its traffic on these other lines. Yes, but I don't think the Seattle-Portland is a branch (St. 369). My answer would be "yes" whether I called it a branch or main line or secondary line.

You ask me to suppose that the G. N.'s Seattle-Portland line hauled nothing but intrastate traffic, but that such traffic, on reaching the remainder of the company's lines at [fol. 340] Seattle, also moved across the state, say to Spokane, on the main line, and that on the main line, in addition to this intrastate traffic from the Portland line, there was also a volume of intrastate freight moving, and you ask whether, under such conditions, the intrastate freight contributed to the main line by the Portland line would reduce the cost of hauling both intrastate traffic and interstate traffic on the main line. It may increase or decrease either your revenues or expenses. You ask if, under the principal that increased volume of traffic reduces the cost per unit of hauling traffic, you would in such case, get a reduction of your unit operating costs for both interstate and intrastate traffic on the main line. Ordinarily, yes, but I would not say in all cases (St. 370).

You ask whether I know, from studies that have been presented to me before the Tax Commission, that the general movement of traffic in 1932 was about similar to 1933, perhaps a little heavier in 1933. I think that is true. In a general way I am familiar with the character of freight that is handled on various G. N. lines in Washington. I know the G. N. has a line from Rock Port to Anacortes, Washington. I know one of the largest cement mills in the state is located at Concrete on that line between Anacortes and Rock Port (St. 374). You ask if I do not know that cement

is a low grade commodity which cannot stand long hauls. Yes. I would like to qualify the previous answer to the question ahead of this one, that cement can't stand a long haul, because cement is shipped from European ports to the Pacific Coast ports by steamer. I wouldn't want to directly say it couldn't stand a long haul. I presume that a large proportion of the output from the concrete plant to go to Washington destinations. It is used locally. I know that that branch did carry a considerable amount of log traffic. I don't know how it is now. I would expect log [fol. 341] traffic to move to intrastate destinations. I imagine the traffic on that line is sparse. You ask if the cost per unit of traffic would be correspondingly high. Well, that gets back to the question of allocation of revenues. The cost, compared with moving freight on other branches or on main lines may be higher and it may not. You ask if I wouldn't expect the cost per unit to be high on a line where traffic is sparse (St. 375). Not necessarily, so. If the freight is handled, both loaded and unloaded, by the railroad company and its employees, the cost would be much higher than either logs or cement loaded by the shipper. You ask if I am going to go into variations between different classes of traffic now. No, I was only thinking of cement and logs that you called attention to that move quite extensively over that particular branch. You ask whether or not, if the traffic were of a similar character, I would not expect the cost per unit of moving it to be higher on a branch line where the business was sparse than on any other similar line where there was a good volume of traffic. Well, there are circumstances there in connection with that. It might be higher and it might not be as high. I can picture a branch line that has very few employees on the line and the cost of doing business on that particular branch would be lower than the one with a greater number of employees of another branch line handling a greater amount of traffic. You say that might be, but that I have also testified that many of the expenses of operating a railroad are constant. That is true. A certain proportion of them are. You ask whether the maintenance, for instance, of a branch line with very sparse traffic to the standard of safety would not be just as heavy as the maintenance of any other line to a similar standard where the volume of traffic was heavy. I don't think so (St. 376). You ask if that is not true so

far as the safety factor is concerned. I can't answer it directly unless you allow me to give my reason. I think a [fol. 342] branch line moving a — amount of tonnage don't require the maintenance that the branch line does get that has a larger tonnage movement. You ask if I would expect the standard of maintenance to go down in proportion to the reduced volume of traffic on two relative lines. I know of cases where it has. You ask if in general I would expect that. Yes, I might say that is true, by some of the larger railroad companies right here in the state. You ask me if I am undertaking to say that in general the cost of maintenance per unit of traffic is not in inverse proportion to the volume. I am not attempting to give that impression. As previously stated, I don't think the volume of traffic on any particular branch line has anything to do with the maintenance expenditures actually made on that line. They can and cannot or would or would not make maintenance expenditures on that line (St. 377).

I did not study any of the operations shown on Def.'s Ex. "17", pages 12 and 13, because I did not have the information before me (St. 380).

Interstate business might (1) begin in Washington and move out, or (2) it might begin outside of Washington and move in, or (3) it might pass through Washington. You ask if it is not a fact that each of the first two interstate hauls would have but one terminal handling in the State. Not in all cases. You say you are referring to the handling at point of origin or termination. There might be handlings in between. I can think of several different cases where that might happen (St. 381). Generally speaking that is true. You ask if it is not a fact that in the case of the third interstate haul, there would be no terminal handlings in the state. With reservations I would answer that generally. You ask if it is not true that if the traffic were in other respects similar, the intrastate business per mile would have to be charged with two terminal handlings, whereas the interstate business for the first two classes [fol. 343] would have to be charged with but one. That is correct. You ask if it is not a fact that if the interstate business of the third class equaled in amount the interstate business of the first two classes, and the business were similar, there would be assignable to each mile of the line haul in the State of Washington but one-half a terminal handling.

Yes. In that case the relation of the total interstate to the total intrastate would be as one to four for terminal handlings. You ask if car miles reflect terminal handlings. No, the car miles of either intra or interstate would not reflect the terminal handlings. Ton miles do not reflect terminal handlings. You ask if the car miles or ton miles that are made in terminals counted or kept of record at all, or reported to the D. P. W. by the railway companies. Not to my knowledge. (Counsel for plaintiff concedes that the only place where car miles or ton miles are connected are on the line haul.) (St. 383.) You ask if the total cost to the railroad of handling its freight consists of first the terminal cost and second the line haul cost. There are costs in addition to that. Well, there is also a traffic expense in securing that business. You say you are classifying traffic expense as one of the overhead costs. So far as the operating cost is concerned, the large costs are the terminal costs and the line haul costs. The rate per unit is made to cover all items of service. The entire system revenues are reported to the D. P. W. You ask if they are not reported without a segregation for revenue between the terminal service and the line haul service. No, there are some segregations made, such as your switching (St. 384). I mean such things as intra-terminal switching and other items that are included in that revenue statement. In general they are reported without segregation. When you [fol. 344] divide the total revenues by the total ton miles to get the average cost per ton mile, you get a unit cost that reflects both terminal handling and line haul service, and it includes also other expenses. That means that to a certain extent, the terminal expenses are averaged over the miles of haul. You ask if it is not a fact that if you have one haul of 100 miles and another haul of 300 miles, and you divide the revenues by the ton miles, and the services are similar, you have only one-third of the terminal expense each ton mile for the long haul you do in each ton for the short haul. Well, that is a result of taking averages. You ask if it is not a fact (St. 385). It does not indicate to me that that is the actual cost of either service. One may cost more than the other, and consequently it gives an improper allocation to the actual costs of handling. You ask if I admit that if the services are similar and one haul is three times the length of the other, you get a unit cost on the long

haul that includes only one-third the terminal expense that really inheres in a short haul. As I said before the average may so indicate. I used averages—ton miles and car miles. You ask if I did not apply those averages indiscriminately to intrastate and interstate traffic. Well, I would not say indiscriminately. I applied them. I applied them in the same manner to both intrastate and interstate traffic (St. 386). I show in Plff.'s Ex. "30" that the revenue per ton mile on interstate freight exceeds revenue per ton mile on intrastate 132% plus. That gets us back to the point of the allocation of revenues again to particular states. The ratio shown in Plff.'s Ex. "30" is the ratio produced from the figures as reported to the D. P. W. I didn't use that ratio for assigning taxes. I used car miles.

[fol. 345] I understand the principle that rates are proportionately higher for short hauls than for long hauls. You ask why that is. Well, there are several factors to be given consideration in that (St. 387). I might sum it up in answering the cost of doing business. You ask if the cost of doing business per unit, per car or per mile, is not higher for short hauls than for long hauls. Not in all cases. You ask if it is not true, generally speaking. Well, I would not even want to answer that as to generally speaking. I know that it is in most cases, and in many cases. You ask if it is not true that the relatively higher revenue per ton mile on intrastate freight and interstate freight in Washington is undoubtedly largely due to the higher rates per ton mile that are charged (St. 388). I don't think it results from that (St. 389). You ask if I know whether that is a fact. No, I don't know that from the figures reported. I don't know anything about the rates; I never studied rates. I know revenues come from rates, and that railroads have no other place to get them (St. 390).

In Plff.'s Ex. "21" I make a downward adjustment of the G. N. intrastate operating costs in Washington. I did not attempt to construct a cost study of my own to determine at what expense the G. N. was handling its intrastate traffic in Washington. That was impossible for me to do.

Referring to Plff.'s Ex. "21" you ask if 51% is a normal operating ratio for switching. I never made a cost study of that. I don't know. I didn't undertake to study that service separately, but I assume in the studies that were

made and are attached to your exhibit "11" that the switching covering those cars was included in your engine hour costs because the classification, as shown there, shows the interchange handling and the industrial switching, and, to [fol. 346] get the total expense of the engines for 24 hours, all classes of service would have to be included. You ask if I made any effort to determine separately what the operating ratio was as applied to the G. N. switching operations in this state. Any effort to determine separately what the operating ratio was as applied to the G. N. switching operations in this state. I assumed and knew that the ratio of 51% was the average applied to all (St. 392) operations whether terminal or line haul. It was the only ratio that could be used under the conditions; I did not have the information from the study as to the actual number of cars handled in this particular switching. How many of them were intrastate or how many of them were interstate. Consequently, I can't arrive at a ratio. You ask if I made any effort to determine the operating revenue applicable to all G. N. switching. No, only the studies of the defendant's table. I took Def.'s Ex. "11" and the studies that were attached or a part of that exhibit as being the switching costs derived from this study. I did not compare those with the revenues from switching for (St. 393) the purpose of determining the operating ratio. An operating ratio is the ratio of expense to revenue. What I applied to this switching item was not the operating ratio of the G. N. switching operations in the state, but the total freight operating ratio in the state.

Plff.'s Ex. "22" undertakes to reapportion the taxes paid by the G. N. in the state for 1933. You ask if a passenger car mile is a similar thing to a freight car mile. Well, they both travel the distance of 5,280 feet. You ask if that is the only point of similarity (St. 394) between them. Well, under the definition of car mile, I can't see any difference. I mean each would fit the definition of a car mile, whether it is a passenger or freight car. You ask if the two things in fact are similar. I would say they were. The weight of a passenger car may be greater than the [fol. 347] freight car or vice versa. There are heavy passenger cars and heavy freight cars with their loads. You ask me what would be true in general—an empty passenger car compared with an empty freight car. I don't think there is any comparison because you have various sizes of

freight cars from flat cars or logging trucks to large heavily constructed cars and that is true of passenger cars. You have small coaches and (St. 395) you have large coaches. I am not able to point out or to state that they are similar. They are dissimilar in all respects, just the same as they are dissimilar even among the freight classifications. I don't know that generally speaking, a passenger car weighs a great deal more than a freight car. I know that the ordinary passenger car is very much larger than the ordinary freight car. I know that it has more wheels. I know that it is usually run in a train of not more than 13 or 14 cars. I will grant that freight cars are run in trains as long as 100 cars or more. That is not because of the weight. The time element is the reason for that. You ask if the fuel consumed in running a passenger train of, say, 14 cars 100 miles would be about the same as the fuel consumed in running a freight train (St. 396) that was much longer. I can cite certain instances where the fuel cost would be no greater, and also many instances where the fuel cost would be much greater. I don't know whether that is because of the higher speed of the passenger train (St. 397). Speed is an important factor in the passenger business, and while important, not so important as the freight business.

(At this point the following proceedings were had:)

[fol. 348] "Mr. Sharpe: I think this is wholly immaterial. It is very obvious that the proper method of apportioning the expense such as taxes joint facility rent is relative use. It doesn't make any difference whether the use is remunerative or not. It is the question of use that determines the proportion of tax.

"Mr. Baimer: Mr. Sharpe is exactly right.

"Mr. Sharpe: For that reason I object to going into the question of relative expense.

"Mr. Balmer: I submit that the reason that he gives sustains my question. That is to say, each apportionment must be on the basis of use. Now, it is brought out here that the use of a railroad by a freight car is entirely different from its use by a passenger car" (St. 399).

(Def.'s Ex. "38" was thereupon received in evidence over plaintiff's objection that the same was immaterial (St. 400-401). The witness then continued:)

If I had assigned tax to the passenger service, freight service, in proportion to revenues, as I did in dealing with the passenger service, I would have increased the freight assignment by 133% (St. 403).

In Plff.'s Ex. "23" I again treat passenger car miles and freight car miles as a common denominator. If the same questions were asked me concerning the specific sheets of my exhibit wherein I adjusted my original studies to the basis of Sheets "A" to "F" of Def.'s Ex. "11", my answers would be the same.

You ask my reason for presenting Plff.'s Ex. "25" relating to pensions. I thought that pensions was a system charge and not a charge directly to the state of Washington. Some portion may be chargeable to Washington, but I think the greater portion is a system charge. I don't think that the state of Washington is interested in the amount of pensions paid to its formers employees in a study of this kind. No doubt some of the men to whom these pensions are paid worked in the State of Washington. You ask if I don't think that a portion of the pensions that these men receive is chargeable to the state of Washington (St. 404).

[fol. 349] No, I don't, not in a study of this kind. I want it to be understood that I am not against the pension principle, and I am not finding fault with the company or criticizing the company for paying pensions. It was not with that intention that I made up this statement, but it was to show that if the pensions, as I stated previously, were absorbed as a system expense that Washington would be relieved.

You ask if I mean that if pensions were not charged to operating expenses at all the state of Washington would be relieved. No, I think they should be treated as a general expense. You ask if I think they should be charged to operating expenses. No, not and allocate directly back to Washington in the manner that they were (St. 405). My thought on the pensions was that pensions are a donation by the owners of this property to its former employees, and would be in the same class as paying dividends on its stock. I think pensions should be charged to profit and loss, and not to operating expenses. I think this is a gift or a grant. I don't think it is deferred compensation to those employees (St. 40

On redirect examination he further testified:

Passenger trains on the average move faster than freight trains. They generally move a great deal faster. It would take a freight train much longer on an average to move from Portland to Seattle than a passenger train. If that is true, a given passenger car would occupy the track between Vancouver and Seattle a shorter time on the average than a freight car. I can't say how much shorter. Freight cars are switched and occupy the right-of-way and tracks of the road longer than passenger cars (St. 407). If it is a question of the occupancy of the premises, a freight car would occupy (St. 407) on an average a given piece of track a much longer time in proportion per mile than would a passenger train. I know of several tracks within [fol. 350] the state of Washington that have been occupied by freight cars for many months now continuously.

Plaintiff's Ex. "39" is a statement showing the railway operating expenses as reported to the D. P. W. for each of the years indicated by accounts showing line numbers as well as accounting numbers, and the name of the account, and there are notations on it of services made as to the amounts that were included in the cost study for which amounts were substituted the actual cost figures. It is my conclusion that the costs which the G. N. charges in Def.'s Ex. "11", page "11", line "1-C" of $79,239 had already been included in its charge of costs of $1,334,268 in line "1-B" on page "7" of the same Exhibit. A rough draft of this exhibit was used by me in drawing that conclusions (St. 408). I testified this morning that accounts 201 to 280 appearing on pages 702, 703 and 704, lines 1 to 10. I named all of those, and these sheets here are to cover those accounts and the figures contained therein were the ones that were used in the cost study, except as stated the direct yard which appears on lines 170 to 184, and 185 to 195 were substituted by the study figures, and the amount appearing on line 229, account 446, is the only figure in the study that was not used.

Referring to my testimony as to the terminal handling connected with intrastate and interstate shipments, you ask if I understand that there are other handlings of freight that occur between the terminal handlings, both

on interstate and intrastate traffic. Yes, there are switching operations that might and are used or are performed other than the mere loading and unloading of the car. You ask if some of those switching operations are contained (St. 409) in Def.'s Ex. "11", page 25, under these elements [fol. 351] of service referred to. Yes, page 25, item 7, would be freighthouse switching or industrial track switching or team tracks. (Question by Defendant's counsel.) You say I would not refer to those as intermediate handlings of freight that had been picked up somewhere else. Well, a car, after it is switched out of the freight house, might be switched out to a team track, or might be taken down to the yard and classified and made up into a train, so it would have several handlings beside the loading of the car. (Question by plaintiff's counsel.) You ask if there are switching operations in connection with the ordinary moving of a train aside from the terminals. Yes, there are several movements, especially if the train were reclassified at Spokane or Hillyard (St. 411).

You ask whether in my opinion a mileage prorate division of freight revenue to the state of Washington is fair to the state. No I don't think it is fair to the state. You ask why. Why, it does not give to the state that originates the traffic a proper proportion of the total revenue, either originating or terminating in the state, either that originates or terminates. You ask why. Because of the added cost of handling, for one thing—the terminal expense. You ask if terminal expense is in any way reflected by the relative mileage of haul. It is not. I might cite as an example there the small railroad in the state, for instance, that originates on its line certain shipments for a very short haul. I refer now to Longview, Portland & Northern, five and a half mile haul was prorated thre and a half cents out of 62.5 cents from their road to St. Paul. I am not speaking of the division between carriers (St. 412). The division of revenues between states as reported. (Questions by defendant's counsel.) The L. P. & N. would report the total which they received, which is wholly an intrastate road, and [fol. 352] their earnings are necessarily by reason of that fact higher than they would be if the shipment were hauled all the way over the G. N. lines there would be less prorated per mile to the state of Washington than on that basis on a line haul on the prorate. I mean a carload of freight

originating in the state of Washington on the lines of the G. N. Railroad but destined to points east of the state of Washington, the revenues from that car of freight is allocated on a mileage basis, on a mileage prorate. Consequently either Washington, Idaho or all the bridge states, and the state delivering the traffic receives the same amount per ton mile, and the state either originating or delivering (St. 413) the traffic with added terminal expenses receives no more than the other states that only carry freight cars from line to line. For that reason I don't think that sufficient revenue has been allocated to the state of Washington or any other state on interstate shipments. You ask if I could determine what amount should properly be apportioned without a very exhaustive study of the subject. Well, I think a study could be made in the same manner as switching studies were made at the terminal stations.

You ask why the state didn't make a cost study similar to the one made by the G. N. There are many reasons. In the first place the Tax Commission has not got enough money to go out and perform a function like that. You ask if we had the records available for us to make a cost study of that kind. No, I didn't have the records available for us to make a cost study of that kind. No, I didn't have the records available. (Question by defendant's counsel.) The only figures I asked defendant's counsel were given to me freely and quickly (St. 414).

Referring to Plff.'s Ex. "21" line "1-E", I applied the [fol. 353] same ratio to the revenue from switching that the G. N. applied in determining the expense as to that particular classification of revenue.

Referring to Plff.'s Ex. "21", line "2-A" I used the same method in computing the passenger proportion of operating expense that I used in preparing the N. P. exhibit—relative revenues—and the same method followed by the G. N. accountant in his apportionment of passenger expense (St. 415).

You ask if I know what these other lines were that were covered by these joint facility rents debit items. (Mr. Burns states that that would not be shown in the report to the D. P. W.; that it is a matter of office records (St. 416).

I think it is true that while an empty freight car may not be as heavy as an empty passenger car, it will ordinarily

occupy the premises of the railroad longer than an empty passenger car. You ask if, in preparing Plff.'s Ex. "22", lines "M" to "P", there were any factors other than relative revenues for the apportionment between intrastate passenger and interstate passenger service. No, I didn't have any other factor but the revenue factor, and I use the same in this exhibit as I did for the N. P.

On recross examination he further testified:

You ask whether it is not a fact that more than a mileage prorate of interstate revenues ought to be assigned to a particular state would depend upon knowing the character of the interstate traffic that was being handled in that state. Yes, it would to a certain extent. It would be part of the study to compare the amounts of bridge traffic that were being handled through the state with the amounts of traffic originating and terminating there.

Plff.'s Exs. "39" and "40" were thereupon received in evidence (St. 418-419).

[fol. 354] Plff.'s Exs. "21" to "36" were thereupon received in evidence subject to defendant's objection that no proper foundation had been laid for their introduction in that the evidence failed to show the qualifications of witness Manschreck to testify on the subject of said exhibits (St. 419-420).

MOTION TO STRIKE

Plaintiff's counsel thereupon made the following motion:

"With respect to G. N.'s Exhibit "11", I wish to move to strike page "A" of that exhibit upon the ground that it is hearsay and based upon data established by hearsay evidence and reports and letters of absent individuals who have not been called as witnesses in the case and based upon the books of record of the company of the G. N. and on the further ground that it is wholly incompetent, irrelevant and immaterial. I move to strike page "B" of the same exhibit on the same ground. Page "C" I also move to strike on the same exhibit on the same ground; also page "D", also page "E" and I move to strike "F" on the same grounds

and also upon the ground that cost of reproduction has nothing to do with the disposition of this case; that the only issue in this case is whether or not the G. N. Company, during the year 1933, was making money or losing (St. 421) money on its intrastate operations in the state of Washington, not whether it was earning a fair return upon its property. I also wish to add that to my ground for moving to strike pages "A" to "F" of G. N.'s Ex. "11", that the apportionment of revenues used as a basis for the preparation of these calculations and pages are not the division of revenue which appear on the books of the company and which were reported to the D. P. W. and Tax Commission of the state of Washington and that no competent evidence has been produced showing that the division of such revenues is made from the books of the company and as reported were not the true and correct method of apportion-
[fol. 355] ment of such revenues as between interstate and intrastate operations.

"I also move to strike pages "1" to "27" and each of said pages of G. N.'s Ex. "11" upon the grounds that the same and each and all of such pages is based upon pure hearsay, and, therefore, is not competent but the basis of a special study concerning which the plaintiff was not given notice and not prepared to test the accuracy of the studies made and was based upon various reports and letters and other data of individuals who have not been produced to testify in this case and consequently, concerning the accuracy of whose statements it has been impossible for the State to test by cross examination" (St. 422).

The foregoing motion was thereupon denied (St. 422).

With respect to Def.'s Identifications "14", "15", "16", "18" and "19", it was thereupon stipulated between counsel that the tender of such identifications to plaintiff's counsel at this time will have the same effect as to the admissibility of the various documents upon which they are based as though these particular identifications had been offered and received in evidence (St. 423-4).

STIPULATION

It was further stipulated that if William P. Maloney were called as a witness for defendant, he would have testified, if the court permitted him so to do, to the revenues that were stated by Mr. Burn and would produce the tariff to show that those were the revenues, it being understood that plaintiff would object to such testimony upon the ground that the evidence was immaterial, incompetent and irrelevant, and that it was not competent to attempt to prove the operating ratio as to a few specific items of switching service without proving the operating ratio on each individual service for the year in order to show the average. It being further understood that if the witness were here the Court would admit his testimony over all the objections stated by plaintiff's counsel. (St. 425-427).

[fol. 356] PLFF'S EX. 21

Great Northern Railway Company

Restatement of expenses incidental to Intrastate operations other than those directly applicable to Account 101—freight revenue, computed on assumption that intrastate freight traffic for 1933 was amount reported to Washington Department of Public Works. (Compare G. N. Ex. 11, p. 7)

1. Freight proportion of intrastate operating expenses, other than expenses applicable to account 101—Freight revenue:			
(a) Total freight revenue—Account 101—Intrastate (G.N. Ex. 11, p. 11)	$2,599.331		
(b) Total freight operating expenses applicable to freight revenue—Account 101—intrastate, and other accounts other than 110 (G. N. Ex. 11, p. 2, line 8)			$1,334,268
(c) Operating ratio (1-b divided by 1-a)		51.33%	
(d) Total intrastate operating revenues included in Account 110—Switching (G. N. Ex. 11, p. 11)		41,977	
(e) Operating expenses applicable to intrastate operating revenues included in Account 110—Switching (c x d)			*21,547
2. Passenger Proportion of Operating Expenses—Intrastate:			
(a) As computed by defendant (G. N. Ex. 11, p. 7, ln. 2-e)			888,967
3. Total railway operating expenses applicable to intrastate operations, freight and passenger (Sum of lns. 1-b, 1-e, and 2-a)			$2,244,782

* Defendant computed this item by applying freight operating ratio (1-c) to $154,372. Plaintiff contends that item should be only $21,547 as indicated. (See Manschreck's testimony, re G. N. Ex. 11, p. 7).

[fol. 357] PLFF.'s EX. 22

Great Northern Railway Company

Computation of taxes apportionable to Washington intrastate operations as deduced from defendant's figures on assumption that intrastate freight traffic for 1933 was amount reported to Washington Department of Public Works. (Compare G. N. Ex. 11, p. 9—Washington State Taxes)

		Freight	Passenger	Total freight and Passenger
(A)	Car miles (DPW, pp. 904–4.....	37,627,003	8,628,481	46,255,484
(B)	Locomotive miles (DPW, p. 904, lines 24, 28, 38, and 39).....	1,285,722	1,123,084	2,408,806
(C)	Total car and locomotive miles...	38,912,725	9,751,565	48,664,290
(D)	Ratio of passenger car and locomotive miles to total freight and passenger car and locomotive miles 9,751,565 ÷ 48,664,290 =	.....	.....	20.04%
(E)	Ratio of freight car and locomotive miles to total freight and passenger car and locomotive miles 38,912,725 ÷ 48,664,290 = ...	.....	.....	79.96%
(F)	Total taxes payable on G. N. operating property for 1933 (Plff's Ex. 37).....	.....	$1,250,860	
	Plus federal taxes paid (G. N. Ex. 11, p. 9, Line 5B).....	.....	9,593	
	Total.....	.....	$1,260,453	
(G)	Less net amount of Washington taxes on G. N. operating property contributed by tenant roads (G. N. Ex. 11, p. 9, Item 4)....	.....	12,556	
			$1,247,897*	
(H)	Net advalorem taxes payable by G. N. on Washington operating property for 1933.....	.....	.....	$1,247,978
(I)	Net Washington taxes for taxes chargeable to freight operations (E x H).....	.....	.....	997,883
(J)	Net taxes chargeable to passenger operations (D x H).....	.....	.....	250,095
(K)	Ratio of intrastate freight car miles to total of intra and interstate for test period 7,601,291 ÷ 37,627,003 (G. N. Ex. 11, p. 4, Item I-e).....	.....	20.2%	
[fol. 358]				
(L)	Taxes apportionable to intrastate freight operations. (K x I. .... (20.2% x $1,007,923	.....	.....	$201,572
(M)	Intrastate passenger revenues (G. N. Ex. 11, p. 11).....	.....	$551,845	.....
(N)	Total intra and interstate passenger revenues (G. N. Ex. 11, p. 11).....	.....	1,540,264	.....
(O)	Ratio of intrastate passenger revenue to total intra and interstate passenger revenue (M ÷ N)	.....	35.83%	.....

PLFF'S EX. 22—Continued

	Freight	Passenger	Total freight and Passenger
(P) Taxes apportionable to intrastate passenger service operations (O x J)	.....	.....	89,609
(Q) Total ad valorem taxes apportionable to intrastate freight and passenger operations (L+P)	.....	.....	$291,181
(R) Other taxes apportioned by defendant to Washington intrastate operations (G. N. Ex. 11, p. 9, Ln 5-f)	.....	.....	3,137
(S) Total of all taxes apportionable to Washington intrastate operations	.....	.....	$294,318

* Defendant's figure of $1, figure of $1,247,978 used.

[fol. 359] PLFF'S EX. 23

Great Northern Railway Company

Computation of Joint Facility Rents chargeable to Washington Intrastate operations for 1933 as deduced from defendant's figures, on assumption that intrastate freight traffic for 1933 was amount reported to Wsabington Department of Public Works (Compare G. N. Ex. "11" p. 9, Item 4)

	Freight	Passenger	Total freight and passenger
(A) Car miles operated on G. N. Seattle-Portland line during 1933 (information received from G. N. by phone Oct. 25, 1934)	4,086,564	1,231,114	5,317,678
(B) Ratio of passenger car miles in (A) to total freight and passenger miles (1,231,114÷5,317,678	.....	.....	23.15%
(C) Ratio of freight car miles in (A) to total freight and passenger miles (4,086,564÷5,317,678	.....	.....	76.85%
(D) Joint facility rents—net debit (G. N. Ex. 11, p. 9, Item 4–A)	.....	.....	$794,018
(E) Freight proportion of "D" (C x D)	.....	.....	610,203
(F) Passenger proportion of "D" (B x D)	.....	.....	183,815
(G) Revenue net ton miles hauled on Seattle-Portland line during week ended Nov. 21, 1933, as testified to by defendant's witness, Burn:			
(G–1) Total	.....	1,384,717	.....
(G–2) Interstate only	.....	1,096,184	.....
(G–3) Intrastate only	.....	288,533	.....
(G–4) Ratio of intrastate to total (G-3÷G-1)	.....	20.84%	.....
(H) Joint facility rents chargeable to intrastate freight operations (G-4 x E)	.....	.....	127,166
(I) Intrastate passenger revenues for 1933 (G. N. Ex. 11, p. 11)	.....	$551,845	.....

PLFF's Ex. 23—Continued

[fol. 358]

	Freight	Passenger	Total freight and Passenger
(J) Total intra and interstate passenger revenues for 1933 (G. N. Ex. 11, p. 11)	.....	1,540,264	.....
(K) Ratio of intrastate passenger revenues to total intra and interstate passenger revenues (I ÷ J)	.....	35.83%	.....
(L) Joint facility rents chargeable to intrastate passenger traffic (K x F)	.....	.....	65,861
(M) Total joint facility rents chargeable to intrastate freight and passenger operations for 1933. (L+H)	.....	.....	$193,027

[fol. 360] PLFF's Ex. 24

Great Northern Railway Company

Washington—Calendar Year 1933

Intrastate Operations

Plaintiff's restatement of operating revenues and expenses, and net railway operating income as deducted from defendant's figures on assumption that intrastate freight traffic for 1933 was amount reported to Washington Department of Public Works (Compare G. N. Ex. "11", p. 1).

	Amount
1. Gross Operating Revenues (G. N. Ex. "11," p. 11)	$3,305,548
2. Operating Expenses (Plff's. Ex. 21, Ln. 3)	2,244,782
3. Net Revenue from Railway Operations (ln. 1 less ln. 2)	$1,060,766
4. Railway tax accruals (Plff's. Ex. 22, ln. S)	294,318
5. Railway Operating Income (ln. 3—ln. 4)	766,448
6. Equipment rents—net debit (G. N. Ex. 11, p. 8, ln. 3-a plus ln. 3-b)	31,659
7. Joint facility rents—net debit (Plff's Ex. 23, ln. M.)	193,027
8. Net Railway Operating Income (Item 5—Items 6 & 7)	$541,762

[fol. 361] PLFF's Ex. 25

Great Northern Railway Company

Reduction in operating expenses as to Washington 1933 intrastate traffic if expense item for "Pensions" eliminated. Computation made on assumption that intrastate freight traffic for 1933 was amount reported to Washington Department of Public Works.

Expenses related solely to freight service (DPW, p. 707, ln. 247, Col. C)	$2,888,737	.....	.....
Expenses apportioned to freight service (DPW, p. 707, ln. 247, Col. E)	1,732,261	$4,620,998	$100.00%
Less 1933 expenses on Washington Intrastate freight traffic (Plff's Ex. 21, p. —, items B and E)	.....	1,355,815	29.34%
Railway operating expenses on Washington interstate freight traffic	.....	3,265,183	70.66%
Pensions:			
Freight (DPW, p. 707, ln. 238)	$45,373		
Passenger (DPW, p. 707, ln. 238)	24,432		
Total	$69,805		

PLFF's Ex. 25—Continued

Amount by which operating expenses incident to intrastate freight traffic should be reduced if pension charge eliminated—29.34% of $45,373:	.....	.....	$13,312
Percentage of railway operating expenses apportionable to Washington for 1933,—intrastate passenger traffic (Plff's Ex. 22, ln. "O")	.....	35.83%	.....
Amount by which operating expenses incident to intrastate passenger traffic should be reduced if pension charge eliminated—35.83% of $24,432:	.....	.....	8,754
Total deduction in railway operating expenses incident to Washington's 1933 intrastate traffic, both freight and passenger, resulting from elimination of pension expense item	.....	.....	$22,066

[fol. 362] PLFF's Ex. 26

Great Northern Railway Company

Washington—Calendar Year 1933

Intrastate Operations

Restatement of railway operating revenues and expenses incident to intrastate operations as deduced from defendant's figures on assumption that certain amount of traffic reported to Washington Department of Public Works as intrastate, was in fact interstate traffic. (Compare G. N. Ex. 11, p. "C.")

Railway Operating Revenues:

(A) Total intrastate freight railway operating revenue (G. N. Ex. 11, p. "B")	$1,622,644
(B) Total intrastate passenger railway operating revenue (G. N. Ex. 11, p. "B")	557,116
(C) Total intrastate railway opeating revenue ("A"+"B"	$2,179,760

Railway Operating Expenses:

(D) Freight operating revenues applicable to Acct. 101, "Freight" (G. N. Ex. 11, p. "B")	$1,502,153
(E) Freight operating ratio (G. N. Ex. 11, p. 7, ln 1-b)	51.33%

PLFF's Ex. 26—Continued

(F)	Railway operating expenses incident to all freight operating revenues other than Acct. No. 110 "Switching" ("E"×"D")	771,055
(G)	Switching revenues, Acct. 110 (G. N. Ex. 11, p. "B")	38,367
(H)	Freight operating ratio (Line "E")	51.33%
(I)	Railway operating expenses incident to account 110—"Switching" ("H"×"G")	19,694
(J)	Passenger operating expenses as computed by defendant (G. N. Ex. 11, p. "C", ln. 2-e)	897,458
(K)	Total operating expenses incident to intrastate operations (sum of lns. "F", "I", and "J")	$1,688,207

[fol. 363] PLFF.'s Ex. 27

Great Northern Railway Company

Computation of Taxes Apportionable to Washington Intrastate Operations as Deduced from Defendant's Figuures on Assumption that Certain Amount of Traffic Reported to Washington Department of Public Works as Intrastate, Was in Fact Interstate Traffic. (Compare G. N. Ex. 11, p. "C", subdiv. 4.)

(A)	Taxes apportionable to 1933 intrastate freight operations on assumption that intrastate freight traffic was as reported to Washington Department of Public Works (Plff.'s Ex. 22, ln. "L")	$201,572
(B)	1933 intrastate freight revenue as computed by defendant on basis of intrastate freight traffic as reported to Washington Department of Public Works (G. N. Ex. 11, p. 11)	2,753,703
(C)	1933 intrastate freight revenue as computed by defendant on theory that certain amount of 1933 intrastate freight traffic as reported to Department of Public Works was in fact interstate (G. N. Ex. 11, p. "B")	1,622,644

PLFF's Ex. 27—Continued

(D)	Ratio of line "C" to line "B" (C.÷B)	*58.93%
(E)	Intrastate freight proportion of 1933 taxes on defendant's theory that certain amount of 1933 intrastate freight traffic as reported to Department of Public Works was in fact interstate (D×A)	118,786
(F)	Taxes apportionable to intrastate passenger service operations as heretofore computed (Plff.'s Ex. 22, "P")	89,609
(G)	Total ad valorem taxes apportionable to intrastate freight and passenger operations on theory that certain amount of 1933 intrastate freight traffic as reported to Department of Public Works was in fact interstate (E+F)	208,395
(H)	Other taxes apportioned by defendant to Washington intrastate operations. (G. N. Ex. 11, p. 9, ln. 5+f)	3,137
(I)	Total of all taxes apportionable to Washington intrastate operations on theory that certain amount of 1933 intrastate freight traffic as reported to Department of Public Works was in fact interstate (G—H)	211,532

*The reduction in ton-miles and car-miles resulting from this assumed transfer of freight traffic from intrastate to interstate is not furnished by defendant. Hence, we are compelled to fall back on relative revenues as a basis for corresponding tax reduction as the only available figure.

[fol. 364] PLFF.'S EX. 28

Great Northern Railway Company

Computation of Joint Facility Rents Chargeable to Washington Intrastate Operations for 1933 as Deduced from Defendant's Figures on Assumption that Certain Amount of Traffic Reported to Washington Department of Public Works as Intrastate, Was in Fact Interstate Traffic. (Compare G. N. Ex. 11, p. "E".)

A. Joint facility rents chargeable to 1933 intrastate freight operations on assumption that intrastate freight traffic was as reported to Washington Department of Public Works (Plff.'s Ex. 23, ln. H)	$127,166
B. 1933 intrastate freight revenue as computed by defendant on basis of intrastate freight traffic as reported to Washington Department of Public Works (G. N. 11, p. 11)	2,753,703
C. 1933 intrastate freight revenue as computed by defendant on theory that certain amount of 1933 intrastate freight traffic as reported to Department of Public Works was in fact interstate (G. N. Ex. 11, page "B")	1,622,644
D. Ration of line "C" to line "B" (C÷B)	*58.93%
E. Intrastate freight proportion of joint facility rents chargeable to 1933 intrastate freight operations on defendant's theory that certain amount of 1933 intrastate freight traffic as reported to Department of Public was in fact interstate (D×A)	$74,939
F. Joint facility rents chargeable to 1933 intra-	

*The relative revenue ton-miles of intrastate and interstate freight hauled on the Seattle-Portland line resulting from this assumed transfer of freight traffic from intrastate to interstate is not shown by defendant. Hence, we are compelled to fall back on relative revenues as a basis for corresponding reduction in joint facility rents chargeable to intrastate freight operations, as the only available figure.

PLFF's Ex. 28—Continued

	state passenger service operations as heretofore computed (Plff.'s Ex. 23, ln. "L")	65,861
G.	Total of all joint facility rents chargeable to Washington 1933 intrastate operations on theory that certain amount of 1933 intrastate freight traffic as reported to Department of Public Works was in fact interstate ("F"+"E")	$140,800

[fol. 365] PLFF.'s Ex. 29

Great Northern Railway Company

Washington—Calendar Year 1933

Intrastate Operations

Plaintiff's Restatement of Operating Revenues and Expenses, and Net Railway Operating Income as Deduced from Defendant's Figures on Assumption that Certain Amount of Traffic Reported to Washington Department of Public Works as Intrastate, Was in Fact Interstate Traffic. (Compare G. N. Ex. 11, p. "A".)

1. Gross Operating Revenues (G. N. Ex. 11, p. "A", ln. 1)	$2,179,760
2. Operating expenses (Plff.'s Ex. 26, ln. K)	1,688,207
3. Net Revenue from Railway Operations (ln. 1—ln. 2)	$491,553
4. Railway Tax accruals (Plff.'s Ex. 27, ln. I)	211,532
5. Railway Operating Income (ln. 3—ln. 4)	$280,021
6. Equipment rents—Net debit (G. N. Ex. 11, p. "D"—Item 6)	19,966
7. Joint Facility Rent—Net debit (Plff.'s Ex. 28, Ln. G)	140,800
8. Net Railway Operating Income (Item 5—Items 6 & 7)	$119,255

[fol. 366] PLFF.'s EX. 30

Great Northern Railway Company

Revenue Per Ton Mile of Freight Hauled in Washington in 1933 (1) Interstate, (2) Intrastate, and (3) Per Cent of Difference Between Interstate and Intrastate

(A) Ton miles revenue freight (intrastate only) (p. 906 DPW)		138,265,617
(B) Freight revenues on intrastate traffic only (p. 700 ln. 1, DPW Rep.)		$2,599,330.92
(C) Revenue per ton mile on intrastate freight traffic (B÷A)=		$0.01880
(D) Total ton miles in Washington (revenue freight)—inter and intrastate (p. 905 ln. 94 DPW)	598,601,059	
(E) Intrastate only (Line "A")	138,265,617	
(F) Interstate only (D—E)		460,335,442
(G) Freight revenue on interstate traffic only (p. 700 ln. 1 DPW)		$3,716,059.26
(H) Revenue per ton mile—interstate freight only (G÷F)=		$0.00807
(I) Percentage by which revenue per ton mile on intrastate freight exceeds revenue per ton mile on interstate freight (C—H)÷H=		132.96%

[fol. 367] PLFF's EX. 31

Great Northern Railway Company

Revenue per passenger mile on Washington passenger traffic in 1933 (1) interstate, (2) intrastate and (3) percent of difference between interstate and intrastate

(A) Revenue passenger miles (intrastate only) (p. 906 DPW)	13,059,677
(B) Passenger revenue—intrastate traffic only (p. 700 1n 2 DPW)	$306,520.59

PLFF'S EX. 31—Continued

(C) Revenue per revenue passenger mile on intrastate traffic (B ÷ A) =		$0.02348
(D) Total revenue passenger miles in Washington—inter and intrastate (p. 905 ln. 98 DPW)	42,283,478	
(E) Intrastate only (A)	13,059,677	
(F) Interstate only (D — E)		29,223,801
(G) Passenger revenue—interstate traffic only (p. 700 ln 2 DPW)		$558,052.35
(H) Revenue per passenger mile—interstate traffic only (G ÷ F) =		$0.01909
(I) Percentage by which revenue per revenue passenger mile on intrastate business exceeds revenue per revenue passenger mile on interstate (C — H) ÷ H =		23.00%

[fol. 368]

PLFF's Ex. 32, Page 1

Comparison of Aggregate Taxes Payable by Certain Interstate Railroad Companies Under Revenue Laws in Force Prior and Subsequent to 40-Mill and Other Limitation Acts—1932 Compared with 1933

Line No.		On Operating Property Of				
		N. P.	G. N.	O.-W.	Milw.	Total
A.	Total ad valorem taxes levied in 1932 payable in 1933	$2,464,986	$1,556,485	$750,535	$827,264	$5,599,270
B.	Equalized assessed valuations for (1) 1932	44,658,663(a)	30,710,723	18,293,038	16,649,871(b)	110,312,295
	(2) 1933	42,864,636	29,304,046	16,734,784	14,841,004	103,744,470
C.	Ratio of 1933 assessed value to 1932 assessed value (line B(2) + line B(1))	95.982802%	95.419590%	91.481710%	89.135850%	94.046153%(c)
D.	Total ad valorem taxes that would have been payable for 1933 on basis of 1932 millage rates (Ln A x line C)	2,365,963	1,485,192	686,602	737,389	5,275,146
E.	Total ad valorem taxes payable for 1933 levied under 40-mill and other limitation acts	2,005,014	1,250,860	608,327	648,440	4,512,641
F.	Total amount of occupational taxes payable for 1933 had same been imposed for entire year 1933	87,038	47,056	10,928	19,713	164,735
G.	Total ad valorem taxes plus occupational taxes, if imposed for entire year 1933, payable for 1933 (line E + line F)	2,092,052	1,297,916	619,255	668,153	4,677,376
H.	Net savings in total taxes, ad valorem and occupational, which said companies would thus have realized in 1933 under new tax plan (Ln D−Ln G)	$273,911	$187,276	$67,347	$69,236	$597,770

[fol. 369]

PLFF'S EX. 32 Page 2

Comparison of Aggregate Taxes Payable by Certain Interstate Railroad Companies Under Revenue Laws in Force Prior and Subsequent to 40-Mill and Other Limitation Acts—1932 Compared With 1933

Line No.		On Operating Property Of				
		N. P.	G. N.	O.-W.	Milw.	Total
I.	Ad valorem taxes for state purposes which would have been levied for 1933 under revenue laws in force prior to 40-mill and other limitation acts	$700,086	$460,684	$272,507	$238,705	$1,671,982
J.	Ad valorem taxes for state purposes actually levied for 1933 under 40-mill and other limitation acts	321,992	211,884	125,335	109,788	768,999
K.	Occupational taxes if levied for entire year 1933 (see line F above)	87,038	47,056	10,928	19,713	164,735
L.	Total ad valorem taxes for state purposes for 1933 under 40-mill and other limitation acts, plus total occupational taxes payable for 1933 had same been imposed for that entire year (ln J + ln K)	409,030	258,940	136,263	129,501	933,734
M.	Net savings in total taxes for state purposes, ad valorem and occupational, which said companies would thus have realized in 1933 under the new tax plan (line I—line L)	$291,056	$201,744	136,244	$109,204	$738,248

(a) Based on $105,000,000 full value as used in settlement.
(b) Actual reassessment value.
(c) 5,275,146 ÷ 5,599,270, equals 94.211317%.

[fol. 370] PLFF's Ex. "33", Page 1

Comparison of Aggregate Taxes Payable by Certain Interstate Railroad Companies Under Revenue Laws in Force Prior and Subsequent to 40-Mill and Other Limitation Acts—1932 Compared With 1934

Line No.		On Operating Property Of				
		N. P.	G. N.	O.-W.	Milw.	Total
A.	Total ad valorem taxes levied in 1932 payable in 1933	$2,464,986	$1,556,485	$750,535	$827,264	$5,599,270
B.	Equalized assessed valuations for:					
	(1) 1932	44,658,663(a)	30,710,723	18,293,038	16,649,871(b)	110,312,295
	(2) 1934	40,167,043	27,577,404	15,452,547	13,803,937	97,000,931
C.	Ratio of 1934 assessed value to 1932 assessed value (line B (2) + line B (1))	89.942332%	89.797313%	84.472284%	82.907171%	87.933019%(c)
D.	Total ad valorem taxes which would be payable for 1934 on basis of 1932 millage rates (ln A × ln C)	2,217,066	1,397,682	633,994	685,861	4,934,603
E.	Total ad valorem taxes which would be payable for 1934 under 40-mill and other limitations acts, on basis of 1933 millage rates.	1,878,833	1,177,157	561,716	603,128	4,220,834
F.	Total amount of occupational taxes which would be payable for 1934 on assumption that companies' revenues will be same in 1934 as in 1933	87,038	47,056	10,928	19,713	164,735
G.	Estimated total ad valorem taxes plus occupational taxes payable on said assumption for 1934 (ln E + ln F)	1,965,871	1,224,213	572,644	622,841	4,385,569
H.	Estimated net savings in total taxes, ad valorem and occupational, which said companies would thus realize in 1934 under new tax plan (ln D − ln G)	$251,195	$173,469	$61,350	$63,020	$549,034

[fol. 371]

PLFF'S EX. "33", Page 2

Comparison of Aggregate Taxes Payable by Certain Interstate Railroad Companies Under Revenue Laws in Force Prior and Subsequent to 40-Mill and Other Limitation Acts—1932 Compared With 1934

Line No.		On Operating Property Of				
		N. P.	G. N.	O.-W.	Milw.	Total
I.	Ad valorem taxes for state purposes which would have been levied for 1934 under revenue laws in force prior to 40-mill and other limitation acts	715,244	471,728	273,610	241,343	1,701,925
J.	Ad valorem taxes for state purposes actually levied for 1934 under 40-mill and other limitation acts	298,738	197,028	114,279	100,802	710,847
K.	Occupational taxes for 1934 if same as for 1933 (see line F above)	87,038	47,056	10,928	19,713	164,735
L.	Total ad valorem taxes for state purposes for 1934 under 40-mill and other limitation acts, plus total occupational taxes payable for 1934 if revenues the same in 1934 as in 1933 (line J + line K)	385,776	244,084	125,207	120,515	875,582
M.	Estimated net savings in total taxes for state purposes, ad valorem and occupational, which said companies would, on this assumption, realize in 1934 under new tax plan (line I—line L)	$329,468	$227,644	$148,403	$120,828	$826,343

(a) Based on $105,000,000 full value as used in settlement.
(b) Actual reassessment value.
(c) 4,934,603 ÷ 5,599,270, equals 88.129399%.

[fol. 372] PLFF's Ex. 34

Computation of millages on 1933 State Board of Equalization's aggregate assessed valuation of all taxable property necessary to raise monies required for state purposes

Name of fund	Amount	Mills
Current School Fund	$ 7,520,572	6.656
University of Washington	1,702,265	1.506
Washington State College	1,012,900	0.896
Bellingham Normal School	301,333	0.267
Cheney Normal School	254,811	0.226
Ellensburg Normal School	185,028	0.164
General Fund	3,178,395	2.813
Veterans' Compensation Bond Retirement	1,129,926	1.000
Total of above funds	$15,285,230	13.528
Plus seventh year delinquencies	464,873	0.411
Total	$15,750,103	13.939

[fol. 373] PLFF's Ex. 35

Computation of millages on 1934 State Board of Equalization's aggregate assessed valuation of all taxable property necessary to raise monies required for state purposes

Name of fund	Amount	Mills
Current School Fund	$ 7,376,545.00	6.794
University of Washington	1,702,299.00	1.568
Washington State College	1,012,810.00	0.933
Bellingham Normal School	301,087.00	0.277
Cheney Normal School	254,766.00	0.234
Ellensburg Normal School	185,284.00	0.170
General Fund	4,343,113.00	4.000
Veterans' Compensation Bond Retirement	1,085,778.00	1.00
Total of above funds	$16,261,682.00	14.976
Plus seventh year delinquencies	476,153.00	0.438
Total	$16,737,835.00	15.414

[fol. 374] PLAINTIFF'S EXHIBIT "36"

Is a work sheet used by witness, Manschreck, in the preparation of Plaintiff's Exhibits "32" and "33" and can be readily referred to by the court if believed necessary.

[fol. 375] PLAINTIFF'S EXHIBIT "37"

Is a letter from Fred Garing, Tax Agent of the G. N., to the Tax Commission, under date of October 9, 1934, reading as follows:

"Replying to your letter of October 8th:

"The total of ad valorem taxes levied against the operating property of the Great Northern Railway in the State of Washington for the year 1933 amounts to $1,250,860.49."

[fol. 376] DEFENDANT'S EXHIBIT "38"

Is a copy of the "Rules Governing the Separation of Operating Expenses between Freight Service and Passenger Service on Large Steam Railways," made by the I. C. C., Issue of 1920, and effective January 1, 1920. These rules may be referred to and quoted in the briefs where pertinent, and are therefore omitted.

[fol. 377] PLAINTIFF'S EXHIBIT "39"

Consists of six large sheets showing in detail, by accounts and account numbers, the G. N.'s Railway Operating Expenses in the State of Washington for each of the years 1931, 1932 and 1933 as reported to the Department of Public Works, and the average for the three years as to Maintenance of Way and Structures, Maintenance of Equipment, Traffic, Transportation-Rail Line, Miscellaneous Operations, General, and Transportation for Investment—Cr., and the Grand Totals.

These sheets are too large to embody in the Abstract and are therefore omitted.

[fol. 378] PLAINTIFF'S EXHIBIT "40"

Is a copy of the testimony of witness, A. S. Edmonds, called as a witness in rebuttal by the plaintiff in State of Washington vs. Northern Pacific Railway Company, and is in substance, as follows:

A. S. EDMONDS, called and sworn as a witness for plaintiff, testified as follows:

I reside in Portland and have been assistant traffic manager of the Union Pacific System for about 13 years. You ask if I have ever had occasion to study the problem of divisions between connecting carriers on inter-line shipments. In my present capacity and previously. You ask if I assisted in fixing the divisions of revenue in interline traffic as to the Union Pacific, the Oregon Short Line and the Oregon Washington Railroad. Yes. That is to say, before they were finally approved they were submitted to me for my approval and I then examined them and concurred in them. The Union Pacific consists of: The O-W. R. and N., Oregon Short Line, Union Pacific Railroad, Los Angeles and Salt Lake Railroad and, in some degree, the St. Jo and Grand Island. The O-W consists of a line from Seattle to Huntington on the border lines between Idaho and Oregon. From an east and west standpoint, that substantially corresponds roughly with the location of Spokane on the Great Northern and Northern Pacific. Then we have a line from Spokane to a connection with the main line at several points, Pendleton, Umatilla, Mesner and the various branches. You ask if this system corresponds roughly with the N. P. system west of Spokane, serving Oregon and parts of Washington. Oh, substantially so, yes. They don't serve the same territory in detail by any manner of means. You say you are speaking of the east and west locations and the character of service as to the territory covered. That is about right. The Oregon Short Line consists mainly of the main line running from Huntington, Oregon, to Granger, Wyoming, with a north and south line running from Butte, [fol. 379] Montana, to Salt Lake City and Ogden, Utah and various branches. The Union Pacific Railroad Company consists of a main line approximately 1000 miles long from Council Bluffs to Ogden with various branches. It goes to Ogden; and a main line from Kansas City out to Denver

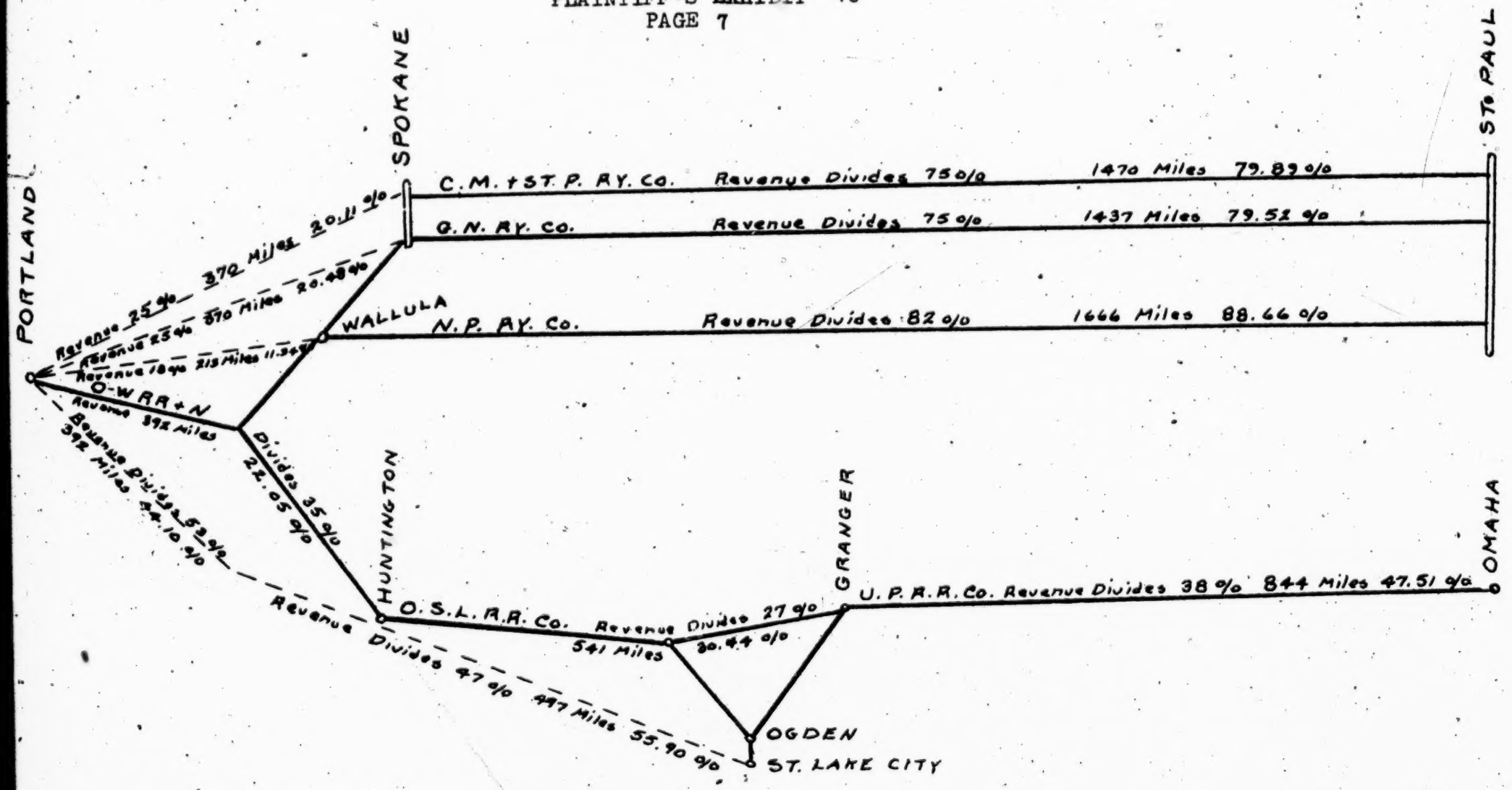
and various branches. The majority of the traffic is handled over the main line between Ogden and Council Bluffs. On a shipment of lumber from Portland to Chicago you ask what would be the ordinary routing of that shipment if the routing was controlled by the Union Pacific Company. Through Huntington, Granger, Council Bluffs, and there we deliver to our connection. Council Bluffs is on the west side of the Missouri River. You ask over what road we ship, say between Omaha or Council Bluffs and Chicago. Over the C. G. & W. the Burlington, Northwestern, and Illinois Central. The Northwestern is the preferred connection. You ask how the distance between Omaha and Chicago, as to shipments between Chicago and Portland over the Union Pacific system via the Northwestern say, with the shipments from Portland to Chicago via the Northern Pacific and St. Paul. About the same. It is approximately the same between St. Paul and Chicago and Omaha and Chicago. That depends on what line you use, either between the Twin Cities and Chicago or between Council Bluffs and Chicago. You ask whether, with respect to the 3 lines, 2 terminal lines and intermediate line, I would say there was any general principal in regard to the apportionment of interline revenue as between those lines of that kind, the connecting lines of that kind as to interline shipment. The bases most generally used has been a mileage pro rate with a minimum of 25% to any line, whether the terminal line or the intermediate line. The local rate is the maximum generally, yes. It might be less than 25%, depending on the agreement of the parties. These divisions [fol. 380] would apply both west and east, to traffic going in both directions. As a rule the short line would get the 25% minimum whether it received the traffic or originated the traffic. I would say generally that 100% of the Oregon Washington stock is controlled by the Short Line, and all but about 1500 shares of the Short Line is controlled by the Union Pacific Railroad. That has been true for a number of years, so far as I know. You ask me to give you the divisions on interline shipments between the O. W. and the Oregon Short Line (O. S. L.), both east and west. The Oregon Washington receives on their traffic interchange 53%, whether east or west bound, the short line 47%. The Oregon Washington proportion would include allowances made by us to Camas Prairie and any of the

water lines that operate, more particularly the line on the Snake River. The Camas Prairie Line extends between Reparia and Grangeville with a branch running to Stites, Idaho, and from there to a place known as Headquarters, north from Orphena. It extends into Washington at Riparia. The physical property of that road is largely owned share and share alike by the N. P. and O. W. If the O. W. received a shipment from some other line, say the N. P., at Portland or some other point, that line would receive a contribution out of the joint rate, which would generally be deducted before we prorated with our own system lines on these percentages that we are talking about. We would first pay them and then apportion the balance 53 and 47. The same thing would generally be true if the shipment originated on the O. S. L. from some other line other than the U. P. You ask what the divisions are between the O. W. the O. S. L. and the U. P. The O. W. 35%, O. S. L. 27%, and U. P. 38%. In other words, on a shipment between Portland and Omaha, the O. W. would receive 35%, of the revenue, the O. S. L. 27% and the U. P. 38%. Roughly, the distance from Portland to Huntington is 390 miles approximately, from Huntington to Granger, 541 miles, and between Granger and Omaha, about 840 or 844. The distance from Huntington to Portland is about 20 miles in [fol. 381] excess of the distance between Portland and Spokane. Those divisions apply whether eastbound or westbound; in whichever direction the business goes. Those divisions were effective about September 1, 1923. The 35% to the O. W. is no more than it got as an independent company. When I concurred in them I stated they were substantially as high as I could negotiate if we were an independent carrier. You ask if the division results in the O. W. receiving more than a mileage prorate. On the average I would say we do not. You must remember, for example, that we get not only 35% on business originating in Portland; we likewise get 35% on business originating in Seattle or destined to Seattle. Similarly we get 53% on business originating at Weiser and coming to Portland where it is nothing like 53% or, indeed, 30% of the mileage. On the other hand, on our lumber business originating at Baker and going to points on the Short Line, Salt Lake and Ogden, where we had considerable movement, we get nothing like 25%. We wouldn't get anything like 25%

under the old arrangement. We got more than 25% in that divisional base, of course. On business from Portland and Portland to Omaha we get considerably more than a mileage prorate. We would get about 30% on a mileage prorate from Seattle to Omaha. On shipments to Omaha, we would get slightly less on a mileage prorate, even on the longest haul, than under the present divisions. We would also get a good deal more on a mileage prorate in the lumber business we handled to Cheyenne, Laramie and Denver. You ask if there is not a particularly large volume of business flowing between Portland and Omaha and points east. No, not a great deal. If you eliminate perishables and lumber and even a substantial quantity of both of those is moving through the canal that we formerly handled. Our transcontinental tonnage, whether going to the Missouri [fol. 382] River or east thereof, is substantially lighter in both directions than it ever has been. You ask whether or not the lines, mileages between various points, and percentages indicated as to revenue and the various divisions indicated on plaintiff's Ex. "52" is correct. I didn't prepare the statements, but I would say they are substantially correct. The words "revenue 25%" on the line extending from Portland to Spokane and from Spokane to St. Paul via Chicago Milwaukee, means that the O. W.'s proportion of the revenue on traffic moving from Portland to St. Paul would be 25%, according to its divisions with the Milwaukee. (Questions by defendant's counsel.). You ask if I know whether those things are correct. I don't know that the mileage is correct. The divisions are. (Questions by plaintiff's counsel.) It is 368 and a fraction miles from Portland to Spokane over our line. I don't know whether Exhibit "52" is taken from our actual distance tables or from our mileage books. There would be some variations because the distances are between different terminals. You ask if the 20.11% indicates the relation between 370 miles and the total distance between Portland and St. Paul via the Milwaukee Road. I don't know as to that. I didn't make the figures, but that is the intention of it, certainly. It applies also as to the G. N. So far as divisions are concerned, those are the correct ones.

(Whereupon plaintiff's Ex. "52" was received in evidence. The witness then continued:)

PLAINTIFF'S EXHIBIT "40"
PAGE 7



238 (PLFF'S EX '32')

You ask if I really know whether the divisions between the O. W., O. S. L. and U. P. yield to the O. W. more or less than a mileage prorate. No, not as a whole. It would take millions and millions of calculations, because, to figure that out, you would have to take every pound of freight that moved from or to a point on the Oregon Washington [fol. 383] and figure the individual shipments on that individual road are getting from the Short Line a very much less revenue. It is one of the heaviest traffics we have.

Plaintiff's Exhibit "52" offered in evidence in State v. Northern Pacific Railway Company appears on the following page:

(Here follows 1 photo, folio 384.)

[fol. 385] A. S. EDMONDS, recalled in the present case for further cross-examination by defendant, testified as follows:

Among possible operating movements from west to east, appearing on Plff's Ex. "52," is a movement from Portland via the O. W. R. & N. to Spokane, and the Milwaukee from Spokane to St. Paul. On that movement I show a division of Portland-St. Paul revenue in the proportions of 25% to the O. W. R. & N. and 75% to the Milwaukee. You ask if we have some through rates from points in the Willamette Valley south of Portland via Portland and Spokane to St. Paul. Yes; not generally throughout the valley, but in some degree. In some cases. For instance, business originating on the S. P. south of Portland and then moving, as shown on this chart, from Portland to Spokane via the O. W. and the Milwaukee line from Spokane to St. Paul. In that particular business the S. P.'s proportion (St. 17) of the St. Paul revenue would be deducted and the remainder would be divided 25 and 75. You ask if it is not a fact that whether the O. W. was an originating or an intermediate carrier on business from Portland or south of Portland, it would get the same proportion of the earnings between Portland and St. Paul. The same percentage proportion, although it would not be as great. There would be less revenue for the O. W. and Milwaukee out of it if the business originated south of Portland. But

what there was to divide, the O. W. and Milwaukee would divide in just the same proportions as if the O. W. had originated the business (St. 18).

On redirect examination he further testified:

You ask if the reason for that is that we have to handle the business at the expensive Portland terminals. No, I think I can perhaps illustrate it a little bit better by a more specific and exact case. We handle, in connection with the G. N., a very considerable business through Spokane going to the northern tier of states and originating on the Mt. Hood Railroad. But obviously if we took our percentage proportion based on this mileage prorate which we are [fol. 386] talking about, and divided that gross revenue on that percentage basis we would receive less revenue in the operation finally (St. 18) as compared with the operation of deducting first the arbitrary or whatever division was allowed the Mt. Hood Railroad, and the participating in the remainder with the G. N. on the basis of the percentage division. To put it in another way, whatever percentage in the divisional rate accrues to each line to the extent that third connecting lines' revenues are deducted prior thereto, the lines handling that business participate about in that degree in that deduction. We retain the same divisions as between ourselves and the others.

It is only fair to say that there are some divisions, particularly on short haul traffic moving over, say, three lines, where there are cases that all three lines participate in that total, or that is, all lines take their percentage of total, of the whole revenue. But that is more or less of an exception and applies more particularly on short haul traffic. That happens on the O. W., O. S. L. and U. P.; we each take our proportion. You ask me what proportion the S. P. gets on such a haul as I have indicated. My recollection is that they get, south of Portland, 20% of the West of the Missouri River revenue. That is far more than a mileage prorate. They don't get quite the minimum of 25% (St. 19), because, in the main, their hauls are substantially shorter, and again there, that is largely a matter of argument. You ask if it doesn't have two or three times or more the mileage prorate. Well, I don't know. It has about twice as much as their maximum. I understand that the S. P. prorates south as far as the Oregon-California

line through Portland, so they have a very substantial mileage prorate. On an exact mileage prorate it would give them at least 14% or 15% on the Omaha business, for example. We do not have any substantial line of rates from points on the S. P. in connection with the G. N. (St. 20).

We got lumber shipments from the Long Bell Lumber Company at Longview before we absorbed the railroad there. We had divisions with that line. That line got an arbitrary of 3½ cents on lumber. You ask how long a haul [fols. 387-411] they had. Well, some of the lumber went through Olequah center or Vader, and some through Longview Junction. The Longview Junction haul was five miles and the Vader haul about twenty-three, but it should be remembered that the I. C. C., in tap line cases, would have allowed them 3½ cents through Vader. The through rate from Longview to Omaha on lumber is 62.5 cents (St. 21). Out of the 62.5 cents this five mile line or twenty-three mile line got 3½ cents (St. 22).

[fol. 412] APPEAL

On the 1st day of April, 1935, the plaintiff appealed from the judgment by giving oral notice thereof (Tr. 95). The transcript on appeal was prepared and filed in the office of the clerk of the superior court on the 19 day of April, 1935; the statement of facts was served on the 25 day of April, 1935; and the statement was settled and certified by the trial judge on the 6 day of May, 1935.

G. W. Hamilton, Attorney General; R. G. Sharpe, Assistant Attorney General, Attorneys for Plaintiff and Appellant.

Due and timely service of the within abstract by receipt of a true copy thereof acknowledged this 6th day of May, 1935.

Thomas Balmer, Attorney for Respondent.

[fol. 413] DEFENDANT'S EXHIBIT No. 11

Page No. "A"

Witness: W. M. Burn

Great Northern Railway Company

Washington—Calendar Year 1933

Intrastate Operations

Operating Revenues and Expenses, and Net Railway Operating Deficit

(Based upon Intrastate Revenue reported to Washington Department of Pubic Works after elimination of revenues received from Interstate and Foreign Commerce, as reported in amended answers to interrogatories.)

1. Gross Operating Revenues (Page "B")	$ 2,179,760
2. Operating Expenses (Page "C"—Item 3)	1,730,361
3. Net Revenue from Railway Operations	449,399
4. Railway Tax Accruals (Page "C"—Item 4)	335,247
5. Railway Operating Income	114,152
6. Equipment Rents—Net Debit (Page "D"—Item 6)	19,966
7. Joint Facility Rent—Net Debit (Page "E"—Item 8)	193,455
8. Total Rentals—Net Debit	213,421
9. Net Railway Operating Deficit (Item 8 minus Item 5)	99,269
10. Cost of Reproduction New, Less Depreciation, as of I. C. C. Valuation Date (June 30, 1915) plus Additions and Betterments to December 31, 1933, of Roadway Property and Equipment in Washington—Intrastate Proportion (Page "F"—Item 9-c)	$29,733,312
11. Annual Rate of Return Earned on above Reproduction Cost	Deficit
12. Interest on above Reproduction Cost @ 5.75% per Annum	1,709,665
13. Amount short of earning a return of 5.75% per Annum (Item 9 plus Item 12)	1,808,934

[fol. 414] EXHIBIT No. —

Page No. B

Witness W. M. Burn

Great Northern Railway Company

Washington—Calendar Year 1933

Intrastate Gross Operating Revenues as Reported on Page 11
(Restated)

	Account	Freight	Passenger	Total
(101)	Freight	$1,502,153	.....	$1,502,153
(102)	Passenger	.....	$306,621	306,621
(103)	Excess Baggage	.....	2,163	2,163
(105)	Parlor and Chair Car	.....	3,292	3,292
(106)	Mail	.....	131,721	131,721
(107)	Express	.....	36,780	36,780
(108)	Other Passenger Train	.....	1,746	1,746
(109)	Milk	.....	12,495	12,495
(110)	Switching	38,367	.....	38,367
(111)	Special Service Train	14	.....	14
(112)	Other Freight Train	434	.....	434
(131)	Dining and Buffet	.....	26,971	26,971
(132)	Hotel and Restaurant	.....	15,654	15,654
(133)	Station, Train and Boat Privileges	.....	318	318
(134)	Parcel Room	.....	2,611	2,611
(135)	Storage—Freight	2,010	.....	2,010
(136)	Storage—Baggage	.....	494	494
(137)	Demurrage	1,016	.....	1,016
(138)	Telegraph and Telephone	3,653	1,279	4,932
(142)	Rents of Buildings and other property	46,570	16,312	62,882
(143)	Miscellaneous	28,427	9,957	38,384
(151) (152)	Joint Facility—Net Debit	.....	(11,298)	(11,298)
	Total	$1,622,644	$557,116	$2,179,760

[fol. 415] EXHIBIT No. —

Page No. "C"

Witness: W. M. Burn

Great Northern Railway Company

Washington—Calendar Year 1933

Intrastate Operations

Basic data pertaining to Information Shown on Page "A"

1. Operating Expenses—Freight:
   (a) Freight Operating Revenues (Page "B") ..... $ 1,622,644
   (b) Freight Operating Ratio (Page 7) 51.33%

Page No. "C"—Continued.

(c) Freight Operating Expenses (a×b)	832,903
2. Operating Expenses—Passenger:	
(a) Passenger Operating Revenues (Page 11)	551,845
(b) Passenger Operating Expenses (Page 7)	888,967
(c) Passenger Operating Ratio (b÷a)	161.09%
(d) Passenger Operating Revenues (Page "B")	557,116
(e) Passenger Operating Expenses (d×c)	897,458
3. Total Operating Expenses (1c plus 2e)	$ 1,730,361
4. Railway Tax Accruals:	
(a) Per Cent. Taxes of Revenues (Page 9)—(Item 5c)	15.38%
(b) Gross Intrastate Operating Revenues (Page "B")	$ 2,179,760
(c) Taxes applicable to Item (b) ($2,179,760×15.38%)	$ 335,247

[fol. 416] Page No. "D"

5. Equipment Rents:

	Amount
Hire of Freight Cars:	
(a) Freight Car Hire Expenses Applicable to Intrastate Traffic (Page 8)	$ 28,571
(b) Freight Operating Expenses (Page 9)	1,413,507
(c) Per Cent. Item (a) of Item (b)	2.02%
(d) Freight Operating Expenses (Page "C")	832,903
(e) Freight Car Hire Expenses Applicable Intrastate Traffic — Restated (d×c)	16,825
Passenger Car Rentals:	
(f) Cost of Passenger Car Rentals Applicable to Intrastate Traffic (Page 8)	3,088
(g) Passenger Operating Expenses (Page 9)	888,967
(h) Per Cent. Item (f) of Item (g)	0.35%
(i) Passenger Operating Expenses (Page "C")	897,458
(j) Cost of Passenger Car Rentals Applicable to Intrastate Traffic — Restated (i×h)	3,141
6. Total Equipment Rents—Debit (5e+5j)	$ 19,966

[fol. 417] Page No. "E"

	Amount
7. Joint Facility Rent Income and Joint Facility Rents—Net Debit	
Freight Proportion:	
(a) Amount applicable to Intrastate Traffic (Page 9—Item 4-G)	$ 158,024
(b) Freight Operating Expenses (Page 9)	1,413,507
(c) Per Cent. Item (a) of Item (b)	11.18%
(d) Freight Operating Expenses (Page "C")	832,903
(e) Joint Facility Rent Expense—Restated (d×c)	$ 93,119
Passenger Proportion:	
(f) Amount applicable to Intrastate Traffic (Page 9—Item 4-h)	99,403
(g) Passenger Operating Expenses (Page 9)	888,967
(h) Per Cent. Item (f) of Item (g)	11.18%
(i) Passenger Operating Expenses (Page "C")	897,458
(j) Joint Facility Rent Expense—Restated (i×h)	100,336
8. Total Joint Facility Rentals—Debit 7e plus 7j	$ 193,455

[fol. 418] Page No. "F"

	Amount
9. Cost of Reproduction New Less Depreciation as of I. C. C. Valuation date (June 30, 1915) plus Additions and Betterments to December 31, 1933, of Roadway Property and Equipment in State of Washington—Applicable to Intrastate Traffic:	
(a) Ratio Reproduction Cost to Total Operating Expenses in Washington, Year 1933 (Page 10—Item 3)	17.1833
(b) Total Intrastate Operating Expenses (Page "C", Item 3)	$ 1,730,361
(c) Reproduction Cost applicable to Washington Intrastate Traffic—Restated (Item a × Item b)	$29,733,312

[fol. 419] Exhibit No. —

Page No. 1

Witness: W. M. Burn

Great Northern Railway Company

Washington—Calendar Year 1933

Intrastate Operations

Operating Revenues and Expenses, and Net Railway Operating Income or Deficit

	Amount	Amount
1. Gross Operating Revenues (Page 11)		$3,305,548
2. Operating Expenses (Pages 2 and 7)		2,302,474
3. Net Revenue from Railway Operations		$1,003,074
4. Railway Tax Accruals (Page 9)		511,530
5. Railway Operating Income		$491,544
6. Equipment Rents—Net Debit (Page 8)		$31,659
7. Joint Facility Rent—Net Debit (Page 9)		257,427
8. Total Rentals—Net Debit		$289,086
9. Net Railway Operating Income (Item 5 minus Item 8)		$202,458
10. Cost of Reproduction New, Less Depreciation, as of I. C. C. Valuation Date (June 30, 1915) plus Additions and Betterments to December 31, 1933, of Roadway Property and Equipment in Washington—Intrastate Proportion (Page 10)		$39,564,102
11. Annual Rate of Return Earned on above Reproduction Cost (9 divided by 10)		0.51%
12. Interest on above Reproduction Cost @ 5.75% per Annum		$2,274,936
13. Amount short of earning a return of 5.75% per Annum (12–9)		$2,072,478

[fol. 420] EXHIBIT No. —

Page No. 1-A

Witness W. M. Burn

Great Northern Railway Company

Comparative Revenue Net Ton Mile Statistics, Year 1933, and Test Period—7 Days Ended November 21, 1933—State of Washington

Item	Intrastate	Interstate	Total
Year 1933:			
1. Revenue Net Ton Miles	138,265,617	460,335,442	598,601,059
Per Cent	23.10%	76.90%	100.00%
Test Period—Seven Days Ended November 21, 1933:			
2. Revenue Net Ton Miles	4,155,692	8,691,505	12,847,197
Per Cent	32.35%	67.65%	100.00%
Revenue Net Ton Miles Per Day:			
3. (a) Based on Annual Revenue Net Ton Miles (Item 1 divided by 365)	378,810	1,261,193	1,640,003
(b) Based on Test Period Revenue Net Ton Miles (Item 2 divided by 7)	593,670	1,241,644	1,835,314
(c) Per Cent. Item 3-b of Item 3-a	156.72%	98.45%	111.91%
Month of November, 1933:			
Revenue Net Ton Miles	14,547,465	44,121,835	58,669,300
Per Cent. of Total	24.80%	75.20%	100.00%
Per Cent. of Year	10.52	9.58	9.80

[fol. 421] EXHIBIT No. —

Page No. 2

Witness W. M. Burn

Great Northern Railway Company

State of Washington—Calendar Year 1933

Cost of Handling Intrastate Freight Traffic

Based on Actual Study of Line Haul Operations During Seven Days Ended November 21, 1933, and of Yard Switching Operations During Seven Days Ended June 15, 1934.

Recapitulation

Item	Page No.	Item No.	Amount
1. Line Haul Costs, exclusive of Train Switching	3	6	$555,371
2. Train Switching Costs	3	9	89,763
3. Freight Car Repairs, Depreciation and Retirements	4	1-f	133,061
4. Train Supplies and Expenses	4	2-c	39,895
5. Wages of Station Employees, and Station Supplies, etc	5	3-f	246,950
6. Traffic Expenses	5	4-f	66,972
7. Yard Switching Expenses	5	5-b	202,256
8. Total Operating Expenses—Comparable with "Freight Revenue"—Account 101			$1,334,268

[fol. 422]

EXHIBIT No. —
Page No. 3
Witness W. M. Burn

Great Northern Railway Company

State of Washington—Calendar Year 1933

Cost of Handling Intrastate Freight Traffic Based on Actual Study of Line Haul Operations During Seven Days Ended November 21, 1933, and of Yard Switching Operations During Seven Days Ended June 15, 1934.

Line Haul Costs—Exclusive of Train Switching

Item	Through Freight Trains	Local Freight Trains	Mixed Trains (Frt. Prop.)	Total
1. Per Cent of Intrastate Revenue Net Ton Miles handled in each class of trains (See Page 6, Item 2-a)	51.72%	42.42%	5.86%	100.00%
2. Intrastate Revenue Net Ton Miles—Year 1933	71,510,977	58,652,275	8,102,365	138,265,617
3. Per Cent. Revenue Gross Ton Miles of Revenue Net Ton Miles (See Page 6, Item 2-b)	232.53%	199.75%	269.45%	.....
4. Revenue Gross Ton Miles—Year 1933 (Item 2 x Item 3)	166,284,475	117,157,919	21,831,822	305,274,216
5. Average Cost Per 100 Revenue Gross Ton Miles (See Page 6, Item 3)	$.12734	$.20795	$.45802	.....
6. Total Line Haul Cost—Exclusive of Train Switching (Item 4 x Item 5)	$211,747	$243,630	$99,994	$555,371
Line Haul—Train Switching Expense				
7. Train Switching cost per 1,000 Revenue net ton miles (See page 6, Item 9)	$.03024	$1.26488	$1.65550	.....
8. Intrastate Revenue Net Ton Miles—Year 1933 (See Item 2 above)	71,510,977	58,652,275	8,102,365	138,265,617
9. Train Switching Cost (Item 8 x Item 7)	$2,162	$74,188	$13,413	$89,763

[fol. 423]

EXHIBIT No. —
Page No. 4
Witness W. M. Burn

Great Northern Railway Company

State of Washington—Calendar Year 1933

Cost of Handling Intrastate Freight Traffic Based on Actual Study of Line Haul Operations During Seven Days Ended November 21, 1933, and of Yard Switching Operations During Seven Days Ended June 15, 1934

			Total Cost
1.	Freight Car Repairs, Depreciation and Retirements:		
(a)	Average cost per revenue freight car mile (Loaded and Empty) based on Annual Reports to Washington Department of Public Works for Years 1931—1932—1933	$.015065	
	Add Indirect proportion of Maintenance of Equipment Expenses—10.82% (See Page 14)	.001630	
	Total	$.016695	
	Add proportion of General Expenses—I. C. C. Accounts 451 to 462, inclusive—4.85% (See Page 14)	.000810	
(b)	Total	$.017505	
(c)	Loaded and Empty Freight Car Miles per 100 Revenue Net Ton Miles (See Page 6, Item 5)	5.4976	
(d)	Intrastate Revenue Net Ton Miles—Year 1933	138,265,617	
(e)	Car Miles required to handle 1933 Intrastate Freight Traffic, (Item 1-d x Item 1-c)	7,601,291	
(f)	Total Cost of Freight Car Repairs (Item 1-e x Item 1-b)		$133,061
2.	Train Supplies and Expenses:		
(a)	Average cost per 100 Revenue Freight Car Miles (Loaded and Empty)—Based on 1933 Annual Report to Washington Dept. of Public Works	$.40255	
	Add Indirect Proportion of Transportation Expenses—23.70%—(See Page 15)	.09540	
	Total	$.49795	
	Add proportion of General Expenses—I. C. C. Accounts 451 to 462, inclusive—5.40% (See Page 15)	.02689	
(b)	Total	$.52484	
(c)	Total cost of Train Supplies and Expenses (Item 1-e x Item 2-b)		$39,895

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EXHIBIT NO. —

Page No. 5

Witness W. M. Burn

Great Northern Railway Company

State of Washington—Calendar Year 1933

Cost of Handling Intrastate Freight Traffic Based on Actual Study of Line Haul Operations During Seven Days Ended November 21, 1933 and of Yard Switching Operations During Seven Days Ended June 15, 1934

			Total Cost
3.	Station Service—Wages of Station Employees and Station Supplies, etc.		
(a)	Freight Proportion of charges to Accounts "Station Employees" and "Station Supplies and Expenses" for year 1933, as contained in Annual Report to Washington Department of Public Works	$310,297	
	Add Indirect Proportion of Transportation Expenses—23.70% (See Page 15)	73,540	
	Total	$383,837	
	Add Proportion of General Expenses—I. C. C. Accounts 451 to 462, inclusive—5.40% (See Page 15)	20,727	
(b)	Total	$404,564	
	Tons of Revenue freight handled in Washington during year 1933:		
	Interstate	1,997,401	
	Intrastate—1,564,758 tons—equated to equivalent Interstate tonnage if handled only once (x 2)	3,129,516	
(c)	Total	5,126,917	
(d)	Average cost per ton, if all Interstate freight (Item 3-b divided by Item 3-c)	$.07891	
(e)	Average cost per ton for handling intrastate freight (2 x $.07891)	$.15782	
(f)	Station Expense for handling Intrastate freight (1,564,758 tons x $.15782)		$246,950

4. Traffic Expenses:		
(a) Total Freight proportion of charges to Traffic Expenses—I. C. C. Accounts 351 to 359, inclusive, for calendar year 1933, as contained in Annual Report to Washington Department of Public Works	$144,644	
Add proportion of General Expenses—I. C. C. Accounts 451 to 462, inclusive—5.40% (See Page 15)	7,811	
(b) Total	$152,455	
(c) Total tons of Revenue freight handled in Washington during calendar year 1933—Interstate and Intrastate	3,562,159	
(d) Traffic expenses per ton of revenue freight (4-b divided by 4-c)	$.04280	
(e) Tons of Intrastate revenue freight handled in Washington—Year 1933	1,564,758	
(f) Traffic Expenses applicable to Washington Intrastate Traffic (4-e x 4-d)		$ 66,972
Yard Switching Expenses—At Terminals Where Yard Switch Engine Service is Maintained:		
5. Yard Switching cost per 1,000 Revenue Net Ton Miles (See Page 6, Item 10-b)	$1.46281	
(a) Intrastate Revenue Net Ton Miles—Year 1933	138,265,617	
(b) Yard Switching Cost (5 x 5-a)		$202,256

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EXHIBIT No. —

Page No. 6

Witness W. M. Burn

Great Northern Railway Company

State of Washington

Averages and Other Pertinent Data Developed from Detailed Study to Determine Cost of Handling Intrastate Freight Traffic

Line Haul—Exclusive of Train Switching

	Through Freight Trains	Local Freight Trains	Mixed Trains (Frt. Prop.)	Total
1. Revenue Gross Ton Miles—Intrastate:				
Empty Movement:				
(a) Tare Weight Per Car (Tons)	22.53	20.70	24.17	.....
(b) Empty Car Miles	54,130	36,377	7,306	97,813
(c) Tare Ton Miles (b x a)	1,219,549	753,004	176,586	2,149,139
Loaded Movement	3,778,061	2,768,651	479,343	7,026,055
Revenue Gross Ton Miles	4,997,610	3,521,655	655,929	9,175,194
2. Revenue Net Ton Miles—Intrastate	2,149,254	1,763,007	243,431	4,155,692
(a) Per Cent. in each class of trains	51.72%	42.42%	5.86%	100.00%
(b) " " G. T. Miles of N. T. Miles	232.53%	199.75%	269.45%	.....
3. Average Cost Per 100 Gross Ton Miles (See Page 12, Item 11)	$.12734	$.20795	$.45802	.....
4. Freight Car Miles—Intrastate:				
(a) Loaded	72,308	48,582	9,760	130,650
(b) Empty (Item 1-b)	54,130	36,377	7,306	97,813
(c) Total	126,438	84,959	17,066	228,463
5. Freight Car Miles Per 100 Net Ton Miles (Item 4-c divided by Item 2)	.....	.....	.....	5.4976

Line Haul—Train Switching

6. Average cost per car handling in revenue service, Interstate and Intrastate (See Page 13, Item 10)	$.787	$.904	$.863	.....
7. Intrastate Revenue Cars Handled:				
Loaded	47	1,411	267	1,725
Empty (74.87% of Loaded)	35	1,056	200	1,291
(a) Total	82	2,467	467	3,016
8. Total Switching Cost (7 a x 6)	$65	$2,230	$403	$2,698
9. Train Switching Cost per 1,000 Revenue Net Ton Miles (8 divided by 2)	$.03024	$1.26488	$1.65550	.....

Yard Switching Costs—At Terminals Where Yard Switch Engine Service Is Maintained

10. Cost of Switching Intrastate Carload Traffiic—7 Days (See Page 18) =	$5,553
" " " " L. C. L. " —7 " " " 20) =	526
(a) Total	$6,079
(b) Yard Switching Cost per 1,000 Revenue Net Ton Miles (10-a divided by 2)	$1.46281

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EXHIBIT No. —
Page No. 7
Witness: W. M. Burn

Great Northern Railway Company

Washington—Calendar Year 1933

Expenses Incidental to Intrastate Operations Other Than Those Directly Applicable to Account 101—Freight Revenue

			Total Cost
1. Freight Proportion of Intrastate Operating Expenses, Other Than Expenses Applicable to Account 101—Freight Revenue:			
(a) Total Freight Revenue—Account 101—Intrastate (Page 11)		$2,599,331	
(b) Total Freight Operating Expenses Applicable to Freight Revenue—Account 101—Intrastate (Page 2)		1,334,268	
Operating Ratio (1-b divided by 1-a)		51.33%	
Total Intrastate Operating Revenues—Freight Proportion (Page 11)	$2,753,703		
Less: Intrastate Freight Revenue—Acct. 101 (Page 11)	2,599,331		
		154,372	
(c) Operating Expenses Applicable to Intrastate Revenues (Freight Proportion) other than Account 101 ($150,554 x 51.33%)			$79,239
2. Passenger Proportion of Operating Expenses—Intrastate:			
(a) Passenger proportion of operating Revenues Intrastate and Interstate (Page 11)			$1,540,264
(b) Passenger proportion of operating expenses—Interstate and Intrastate—as reported to W. D. P. W.			$2,481,136
(c) Operating Ratio			161.09%
(d) Intrastate Operating Revenues Passenger proportion (Page 11)			$551,845
(e) Intrastate Operating Expenses—Passenger proportion (d) x (c)			$888,967

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EXHIBIT No. —
Page No. 8
Witness: W. M. Burn

Great Northern Railway Company

Washington—Calendar Year 1933

Expenses Incidental to Intrastate Operations Other Than Those Directly Applicable to Acct. 101—Freight Revenue

		Total Cost
3. Equipment Rentals—Intrastate Hire of Freight Cars:		
Loaded and Empty Freight Car Miles—System—Year 1933	336,767,017	
Loaded and Empty Freight Car Miles—Washington—Year 1933	37,627,003	
Per Cent. Washington of System	11.17%	
Net Cost of Freight Car Hire—System—Year 1933	$1,266,243	
Net Cost of Freight Car Hire—Washington—Year 1933 11.17% of $1,266,243		$141,439

Page No. 8—cont.

		Total Cost
Washington Intrastate Freight Car Miles Applicable to Year 1933 (Per Study)—Page 4, Item 1-e	7,601,291	
Per Cent. Intrastate Freight Car Miles of Total—Washington	20.20%	
(a) Freight Car Hire Expense Applicable to Intrastate Traffic (20.20% of $141,439)		$28,571
Passenger Car Rentals:		
Passenger Car Miles—System—Year 1933	49,070,552	
Passenger Car Miles—Washington—Year 1933	8,628,481	
Per Cent. Washington of System	17.58%	
Net Cost of Passenger Car Rentals—System—Year 1933	$56,874	
Net Cost of Passenger Car Rentals—Washington—Year 1933 (17.58% of $56,874)	$9,998	
Cost of Passenger Car Rentals applicable to Washington Intrastate Traffic—Year 1933—based on Revenue Passengers carried one mile 30.89%		
(b) (See Page 7) x $9.998		$3,088

Note.—"Locomotive Rentals" and "Work Equipment Rentals" have not been included, owing to fact that Debit items in these accounts are practically offset by Credit items applicable thereto.

[fol. 428]

EXHIBIT No. —

Page No. 9

Witness: W. M. Burn

Great Northern Railway Company

Washington—Calendar Year 1933

Expenses Incidental to Intrastate Operations Other Than Those Directly Applicable to Freight Revenue—Account 101

4. Joint Facility Rent Income and Joint Facility Rents—Net Debit:		Total Cost
Washington—Intrastate and Interstate:		
Account 541—Joint Facility Rents—Debit		$859,089
" 508—Joint Facility Rent Income—Credit	$77,627	
Less Taxes Included	12,556	
		$65,071
(a) Net Debit		$794,018
Operating Expenses—Intrastate and Interstate:		
(b) Freight Proportion	$4,620,998 =	65.06%
(c) Passenger Proportion	2,481,135 =	34.94%
Total	$7,102,133 =	100.00%
(d) Freight Proportion of Item 4-A (65.06%)		$516,588
(e) Passenger Proportion of Item 4-A (34.94%)		277,430

Operating Expenses—Intrastate	Freight Proportion	Passenger Proportion
Applicable to Account 101 (Freight Revenue) Page 2	$1,334,268	0
Other....Page 7, Items 1-c and 2-e	79,239	$888,967
(f) Total	$1,413,507	$888,967
Not Expense of Joint Facility Rents Applicable to Intrastate Operations:		
(g) Freight Proportion ($1,413,507 Item f) divided by ($4,620,998 Item b) 50.59% x ($516,588 Item d)		$158,024
(h) Passenger Proportion ($888,967 Item f) divided by ($2,481,135 Item c) 35.8 % x ($277,430 Item e)		$ 99,403

Page No. 9—cont.

		Total Cost
5. Washington State Taxes:		
(a) Gross Operating Revenues—Intrastate and Interstate—1933 (Page 11)		$8,114,351
(b) Washington Taxes Paid ($1,238,385) and Proportion of Federal Taxes ($9,593)		$1,247,978
(c) Per cent (b) of (a)		15.38%
(d) Intrastate Revenues (Page 11)		$3,305,548
(e) Intrastate Taxes (d) x (c)	$508,393	
(f) Inspection Fee	3,137	
		$511,530

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EXHIBIT No. —
Page No. 10
Witness: W. M. Burn

Great Northern Railway Company

State of Washington

			Amount
1. Cost of Reproduction New, Less Depreciation, as of I. C. C. valuation date (June 30, 1915) plus Additions and Betterments to December 31, 1933, of Roadway Property and Equipment in State of Washington		$122,038,008	
2. Total Operating Expenses, Freight and Passenger, in Washington, Year 1933—Intrastate and Interstate		7,102,133	
3. Ratio Item No. 1 of Item No. 2		17.1833	
4. Intrastate Operating Expenses—1933			
Freight Proportion:			
Page 2, Item 8	$1,334,268		
Page 7, Item 1-c	79,239		
(a) Total	$1,413,507		
Passenger Proportion:			
(b) Page 7, Item 2-e	$888,967		
5. Reproduction Cost of Property Applicable to Washington Intrastate Operations:			
Freight Proportion (Item 4-a x 17.1833)			$24,288,715
Passenger Proportion (Item 4-b x 17.1833)			15,275,387
Total			$39,564,102

(Here follow tables, side folios 430, 431, 432 and 433.)

[fols. 430 & 431]

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EXHIBIT No. —
Page No. 11
Witness: W. M. Burn

Great Northern Railway Company

State of Washington

Year 1933

Gross Operating Revenues

Account	Intrastate			Interstate			Total Intrastate and Interstate		
	Freight	Passenger	Total	Freight	Passenger	Total	Freight	Passenger	Total
(101) Freight	$2,599,331	.....	$2,599,331	$3,716,059	.....	$3,716,059	$6,315,390	.....	$6,315,390
(102) Passenger	.....	$306,621	306,621	.....	$558,052	558,052	.....	$864,673	864,673
(103) Excess Baggage	.....	2,163	2,163	.....	3,938	3,938	.....	6,101	6,101
(105) Parlor and Chair Car	.....	3,292	3,292	.....	2,725	2,725	.....	6,017	6,107
(106) Mail	.....	131,721	131,721	.....	294,697	294,697	.....	426,418	426,418
(107) Express	.....	36,780	36,780	.....	82,287	82,287	.....	119,067	119,067
(108) Other Passenger Train	.....	1,746	1,746	.....	3,431	3,431	.....	5,177	5,177
(109) Milk	.....	12,495	12,495	.....	1,998	1,998	.....	14,493	14,493
(110) Switching	41,977	.....	41,977	69,197	.....	69,197	111,174	.....	111,174
(111) Special Service Train	14	.....	14	1,392	.....	1,392	1,406	.....	1,406
(112) Other Freight Train	434	.....	434	60	.....	60	494	.....	494
(131) Dining and Buffet	.....	26,971	26,971	.....	49,089	49,089	.....	76,060	76,060
(132) Hotel and Restaurant	.....	15,654	15,654	.....	.....	.....	.....	15,654	15,654
(133) Station train and boat privileges	.....	318	318	.....	578	578	.....	896	896
(134) Parcel Room	.....	2,611	2,611	.....	.....	.....	.....	2,611	2,611
(135) Storage—Freight	2,010	.....	2,010	894	.....	894	2,904	.....	2,904
(136) Storage—Baggage	.....	494	494	.....	899	899	.....	1,393	1,393
(137) Demurrage	1,016	.....	1,016	2,089	.....	2,089	3,105	.....	3,105
(138) Telegraph and Telephone	4,095	837	4,932	5,997	1,579	7,576	10,092	2,416	12,508
(142) Rents of Buildings and Other Property	52,205	10,677	62,882	.....	.....	.....	52,205	10,677	62,882
(143) Miscellaneous	52,621	10,763	63,384	24,696	6,502	31,198	77,317	17,265	94,582
(151) (152) Joint Facility—Net Debit	.....	(11,298)	(11,298)	.....	(17,356)	(17,356)	.....	(28,654)	(28,654)
Item "A" Total	$2,753,703	$551,845	$3,305,548	$3,820,384	$988,419	$4,808,803	$6,574,087	$1,540,264	$8,114,351

[fol. 432]

Exhibit No. —. Page No. 12. Witness: W. M. Burn

Great Northern Railway Company

State of Washington

Road Haul Cost of Transporting Intrastate Freight Traffic—Based on Study of Freight and Mixed Train Operations During 7 Days Ended November 21, 1933

Applicable to Interstate and Intrastate Traffic—Exclusive of Yard Switching—Washington Only

Item or Account	Through Freight Trains			Local Freight Trains			Mixed Trains (Frt. Propr'n)			Grand Total		
	Gross Ton Miles	Cost Per 100 G.T.M.	Total Cost	Gross Ton Miles	Cost Per 100 G.T.M.	Total Cost	Gross Ton Miles	Cost Per 100 G.T.M.	Total Cost	Gross Ton Miles	Cost Per 100 G.T.M.	Total Cost
1. Maintenance of Way and Structures, including Train Switching	22,321,929	$.0476	$10,617	9,194,096	$.0751	$6,909	1,059,113	$.1811	$1,918	32,575,138	$.0597	$19,444
Add Proportion of General Expenses—I. C. C. Accounts 451 to 462, inclusive—4.85% (See Page 14)	.....	.....	515	.....	.....	335	.....	.....	93	.....	.....	943
2. Total M. W. and S.	22,321,929	$.0499	$11,132	9,194,096	$.0788	$7,244	1,059,113	$.1899	$2,011	32,575,138	$.0626	$20,387
	Locomotive Miles	Cost Per Loco. Mile	Total Cost	Locomotive Miles	Cost Per Loco. Mile	Total Cost	Locomotive Miles	Cost Per Loco. Mile	Total Cost	Locomotive Miles	Cost Per Loco. Mile	Total Cost
3. Maintenance of Equipment—Excluding Train Switching:												
Locomotive Repairs	8,313	$.3070	$2,552	9,242	$.1937	$1,790	2,982	$.1643	$490	20,537	20,537	$4,832
Locomotive Depreciation	8,313	.2432	2,022	9,242	.1143	1,056	2,982	.0614	183	20,537	.1588	3,261
Locomotive Retirements	8,313	.....	.....	9,242	.0002	2	2,982	.0010	3	20,537	.0002	5
Total Direct Expenses	8,313	$.5502	$4,574	9,242	$.3082	$2,848	2,982	$.2267	$676	20,537	$.3943	$8,098
Add Indirect Proportion of M. of E. Expenses—10.82% (See Page 14)	.....	.....	495	.....	.....	308	.....	.....	73	.....	.....	876
Total	.....	.....	$5,069	.....	.....	$3,156	.....	.....	$749	.....	.....	$8,974
Add Proportion of General Expenses—I. C. C. Accounts 451 to 462, inclusive—4.85% (See Page 14)	.....	.....	246	.....	.....	153	.....	.....	36	.....	.....	435
4. Total Maintenance of Equipment	8,313	$.6394	$5,315	9,242	$.3580	$3,309	2,982	$.2632	$785	20,537	$.4581	$9,409
5. Transportation Expenses—Excluding Train Switching:												
Fuel for train locomotives	8,313	$.6663	$5,539	9,242	$.2729	$2,522	2,982	$.1868	$557	20,537	$.4196	$8,618
Water for train locomotives	8,313	.0056	47	9,242	.0068	63	2,982	.0070	21	20,537	.0064	131
Lubricants for train locomotives	8,313	.0089	74	9,242	.0041	38	2,982	.0044	13	20,537	.0061	125
Other supplies for train locomotives	8,313	.0023	19	9,242	.0016	15	2,982	.0013	4	20,537	.0018	38
Enginehouse Expenses—Train	8,313	.0585	486	9,242	.0633	585	2,982	.0533	159	20,537	.0599	1,230
6. Total	8,313	$.7416	$6,165	9,242	$.3487	$3,223	2,982	$.2528	$754	20,537	$.4938	$10,142
	Train Hours	Cost Per Train Hour	Total Cost	Train Hours	Cost Per Train Hour	Total Cost	Train Hours	Cost Per Train Hour	Total Cost	Train Hours	Cost Per Train Hour	Total Cost
Wages of Train Enginemen and Motormen, excluding Train Switching	312.88	$4.5704	$1,430	481.86	$2.7062	$1,304	115.88	$3.2447	$376	910.62	$3.4152	$3,110
Wages of Trainmen, excluding Train Switching	312.88	5.0851	1,591	481.86	4.2398	2,043	115.88	3.8488	446	910.62	4.4805	4,080
7. Total	312.88	$9.6555	$3,021	481.86	$6.9460	$3,347	115.88	$7.0935	$822	910.62	$7.8957	$7,190
Total Direct Transportation Expenses (Item 6 plus Item 7)	.....	.....	$9,186	.....	.....	$6,570	.....	.....	$1,576	.....	.....	$17,332
Add Indirect Proportion of Transportation Expenses—23.70% (See Page 15)	.....	.....	2,177	.....	.....	1,557	.....	.....	374	.....	.....	4,108
Total	.....	.....	$11,363	.....	.....	$8,127	.....	.....	$1,950	.....	.....	$21,440
Add Proportion of General Expenses—I. C. C. Accounts 451 to 462, inclusive—5.40% (See Page 15)	.....	.....	614	.....	.....	439	.....	.....	105	.....	.....	1,158
8. Total Transportation Expenses	.....	.....	$11,977	.....	.....	$8,566	.....	.....	$2,055	.....	.....	$22,598
9. Grand Total—Sum of Items 2, 4 and 8	.....	.....	$28,424	.....	.....	$19,119	.....	.....	$4,851	.....	.....	$52,394
10. Revenue Gross Ton Miles (Item 2)	22,321,929	.....	.....	9,194,096	.....	.....	1,059,113	.....	.....	32,575,138	.....	.....
11. Average Cost Per 100 Revenue Gross Ton Miles (Item 9 Divided by Item 10)	.....	$.12734	.....	.....	$.20795	.....	.....	$.45802	.....	.....	$.16084	.....

[fol. 433]

Exhibit No. —. Page No. 13. Witness: W. M. Burn

Great Northern Railway Company

State of Washington

Road Haul Cost of Transporting Intrastate Freight Traffic Based on Study of Freight and Mixed Train Operations During 7 Days Ended November 21, 1933

Train Switching Expenses—Applicable to Interstate and Intrastate Traffic—Washington Only

Item or Account	Through Freight Trains			Local Freight Trains			Mixed Trains (Freight Proportion)			Grand Total		
	Locomotive Miles	Cost Per Loco. Mile	Total Cost	Locomotive Miles	Cost Per Loco. Mile	Total Cost	Locomotive Miles	Cost Per Loco. Mile	Total Cost	Locomotive Miles	Cost Per Loco. Mile	Total Cost
1. Maintenance of Equipment:												
Locomotive Repairs	206	$.3107	$64	2,426	$.1962	$476	434	$.1774	$77	3,066	$.2012	$617
Locomotive Depreciation	206	.1845	38	2,426	.1055	256	434	.0415	18	3,066	.1018	312
Locomotive Retirements	206	.....	.....	2,426	.....	.....	434	.0023	1	3,066	.0003	1
Total Direct Expenses	206	$.4952	$102	2,426	$.3017	$732	434	$.2212	$96	3,066	$.3033	$930
Add Indirect Proportion of M. of E. Expenses 10.82% (See Page 14)	.....	.....	11	.....	.....	79	.....	.....	10	.....	.....	100
Total	.....	.....	$113	.....	.....	$811	.....	.....	$106	.....	.....	$1,030
Add Proportion of General Expenses, I. C. C. Accounts 451 to 462, inclusive—4.85% (See Page 14)	.....	.....	6	.....	.....	39	.....	.....	5	.....	.....	50
2. Total Maintenance of Equipment	206	$.5777	$119	2,426	$.3504	$850	434	$.2558	$111	3,066	$.3522	$1,080
3. Transportation Expenses:												
Fuel for train locomotives	206	$.5971	$123	2,426	$.2712	$658	434	$.2166	$94	3,066	$.2854	$875
Water for train locomotives	206	.0049	1	2,426	.0070	17	434	.0069	3	3,066	.0068	21
Lubricants for train locomotives	206	.0097	2	2,426	.0041	10	434	.0046	2	3,066	.0046	14
Other supplies for train locomotives	206	.0048	1	2,426	.0017	4	434	.0023	1	3,066	.0020	6
Enginehouse Expenses—Train	206	.0631	13	2,426	.0688	167	434	.0484	21	3,066	.0655	201
4. Total	206	$.6796	$140	2,426	$.3528	$856	434	$.2788	$121	3,066	$.3643	$1.117
	Train Hours	Cost Per Train Hour	Total Cost	Train Hours	Cost Per Train Hour	Total Cost	Train Hours	Cost Per Train Hour	Total Cost	Train Hours	Cost Per Train Hour	Total Cost
Wages of Train Enginemen and Motormen	27.09	$4.2082	$114	337.63	$2.4732	$835	73.40	$2.0436	$150	438.12	$2.5084	$1,099
Wages of Trainmen	27.09	4.7250	128	337.63	3.8681	1,306	73.40	2.5068	184	438.12	3.6931	1,618
5. Total	27.09	$8.9332	$242	337.63	$6.3412	$2,141	73.40	$4.5504	$334	438.12	$6.2015	$2,717
6. Total Direct Transportation Expenses (Item 4 plus Item 5)	.....	.....	$382	.....	.....	$2,997	.....	.....	$455	.....	.....	$3,834
Add indirect Proportion of Transportation Expenses—23.7% (See Page 15)	.....	.....	91	.....	.....	710	.....	.....	108	.....	.....	909
Total	.....	.....	$473	.....	.....	$3,707	.....	.....	$563	.....	.....	$4,743
Add Proportion of General Expenses—I. C. C. Accounts 451 to 462, inclusive—5.4% (See Page 15)	.....	.....	26	.....	.....	200	.....	.....	30	.....	.....	256
7. Total Transportation Expenses	.....	.....	$499	.....	.....	$3,907	.....	.....	$593	.....	.....	$4,999
8. Grand Total—Train Switching Expense—(Item 2 plus Item 7)	.....	.....	$618	.....	.....	$4,757	.....	.....	$704	.....	.....	$6,079
9. Total Revenue Cars Switched—Loads and Empties	.....	.....	785	.....	.....	5,262	.....	.....	816	.....	.....	6,863
10. Train Switching Cost Per Car (Item 8 divided by Item 9) =	.....	.....	$.787	.....	.....	$.904	.....	.....	$.863	.....	.....	$.886

[fol. 434] Exhibit No. —. Page No. 14. Witness: W. M. Burn

Great Northern Railway Company

Indirect Proportion of Operating Expenses Included in Study to Determine Cost of Handling Intrastate Freight Traffic Exclusive of Yard Switching

State of Washington

Maintenance of Equipment Expenses (Freight Proportion):		
1. Annual average of three years ended December 31, 1933, applicable to Intrastate and Interstate Traffic		$1,171,129
2. Less charges applicable to direct accounts used in study:		
Freight car Repairs, Depreciation and Retirements	$538,281	
Freight locomotive Repairs, Depreciation and Retirements	518,550	1,056,831
3. Indirect Expenses		$114,298
4. Per Cent. Item 3 of Item 2		10.82%

Proportion of General Expenses—I. C. C. Accounts 451 to 462—Applicable to M. of W. and S. and M. of E. Expenses

5. Total Operating Expenses (Freight) exclusive of General Expenses—Annual average of three years ended December 31, 1933, excluding yard switching costs (Freight Proportion) charged to M. of W. and S. and Maintenance of Equipment Accounts, applicable to Intrastate and Interstate Traffic	$4,770,654
6. General Expenses (Freight Proportion)—Annual average of three years ended December 31, 1933, excluding amount applicable to Yard Switching costs charged to M. of W. & S. and Maintenance of Equipment (Freight)	$231,490
7. Per Cent. Item 6 of Item 5	4.85%

[fol. 435] Exhibit No. —. Page No. 15. Witness: W. M. Burn

Great Northern Railway Company

Indirect Proportion of Operating Expenses Included in Study to Determine Cost of Handling Intrastate Freight Traffic

Exclusive of Yard Switching

State of Washington

Transportation Expenses (Freight Proportion)		
1. Total for calendar year 1933, applicable to Intrastate and Interstate Traffic		$1,786,380
2. Less charges applicable to direct accounts used in study:		
Wages of train enginemen and motormen	$194,287	
Wages of trainmen	260,209	
Fuel, water, lubricants and other supplies for train locomotives	462,631	
Enginehouse expenses—train	77,168	
Train supplies and expenses	139,576	
Station employees	291,016	
Station supplies and expenses	19,281	1,444,168
3. Indirect expenses		$342,212
4. Per Cent. Item 3 of Item 2		23.70%

Proportion of General Expenses—I. C. C. Accounts 451 to 462—Applicable to Transportation and Traffic Expenses

5. Total Operating Expenses (Freight) exclusive of General Expenses, for calendar year 1933, excluding yard switching costs (Freight Proportion) charged to Transportation Expenses	$3,747,649
6. General Expenses (Freight Proportion) for calendar year 1933, excluding amount applicable to Yard Switching Costs charged to Transportation Expenses	$202,474
7. Per Cent. Item 6 of Item 5	5.40%

[fol. 436] Exhibit No. —. Page No. 16. Witness: W. M. Burn

Great Northern Railway Company

Terminal Cost Studies (Service Performed by Yard Switch Engines Only)
June 9, 1934, to June 15, 1934

Summary of Cost Per Element to Determine Switching Costs Per Loaded Car

State of Washington—Intrastate Carload Traffic

Item	Movement of Traffic From	To	Elements of Switching Service Performed	Cost Per Car	No. of Cars	Total Costs
	Hillyard-Spokane Terminal:					
	G. N. Line Haul Cars Terminated					
1.	Hillyard Class Yd.	Spokane Industries	1-2-3-6-6-3-1	$6.91	2	$13.82
2.	Hillyard Class Yd.	Spokane Team Track	1-3-2-8-8-2-3-1	5.79	10	57.90
3.	Hillyard Class. Yd.	Hillyard Industries	1-5-5-1	3.43	15	51.45
4.	Hillyard Class Yd.	Hillyard Team Track	1-8-8-1	3.66	1	3.66
	G. N. Line Haul Cars Switched to Connecting Lines					
5.	Hillyard Class. Yd.	Spokane Interchange Tracks	(Loaded = 1-3-2-9-4	$2.91	58	$168.78
			(Empty = 4-2-3-1	2.25	55	123.75
6.	Hillyard Class. Yd.	Spokane Interchange Tracks	1-3-2-4-4-2-3-1	4.51	25	112.75
7.	Hillyard Class. Yd.	Spokane Interchange Tracks	1-3-2-9-4-4-2	4.08	1	4.08
8.	Spokane Class. Yd.	Spokane Interchange Tracks	2-4-4-2-3-1	3.42	17	58.14
9.	Spokane Class. Yd.	Spokane Interchange Tracks	2-4-4-2	2.34	7	16.38
	G. N. Line Haul Cars Switched from Connecting Lines					
10.	Spokane Interchange Tracks	Spokane Class. Yd.	4-2	$1.17	3	$3.51
11.	Spokane Interchange Tracks	Spokane Class Yd.	2-4-4-2	2.34	11	25.74
12.	Spokane Interchange Tracks	Spokane Class. Yd.	(Empty = 2-4	1.17	7	8.19
			(Loaded = 4-2	1.17	18	21.06

For explanation of above Code numbers under "Elements of Switching Service Performed" and switching cost per element of service, see Page 21.

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Item	Movement of Traffic From	To	Elements of Switching Service Performed	Cost Per Car	No. of Cars	Total Costs
13.	Spokane Interchange Tracks	Hillyard Class. Yd.	(Empty = 1-3-2-4	2.25	2	4.50
			(Loaded = 4-2-3-1	2.25	3	6.75
	G. N. Line Haul Cars Passing Through Terminal (Loads)					
14.	Hillyard Class. Yd.	Hillyard Class. Yd.	1-9	$1.21	17	$20.57
	Hillyard Class. Yd.	Hillyard Class. Yd.	-1-	.56	12	6.72
	Total			....	...	$707.75
	Appleyard-Wenatchee Terminal:					
	G. N. Line Haul Cars Terminated					
			(Loaded = 1-2-12	$2.38	59	$140.42
			(Loaded = 1-4-2-12	3.17	4	12.68
1.	Appleyard Class. Yd.	Wenatchee Industries	(Empty = 1-12-	1.45	36	52.20
			(Empty = 12-2-1	2.38	27	64.26
	G. N. Line Haul Cars Originated					
			(Empty = -12-	$1.45	35	$50.75
			(Empty = 1-2-12	2.38	42	99.96
2.	Wenatchee Industries	Appleyard Class. Yd.	(Loaded = 12-2-1	2.38	46	109.48
			(Loaded = 12-2-4-1	3.17	31	98.27
	G. N. Line Haul Cars Passing Through Terminal (Loads)					
			(-1-	$.43	202	$86.86
			(1-4	1.21	21	25.41
3.	Appleyard Class. Yd.	Appleyard Class. Yd.	(1-5	1.17	2	2.34
			(1-7	1.3	4	5.20
	Total			....	...	$747.83

For explanation of above Code numbers under "Elements of Switching Service Performed" and switching cost per element of service, see Page 21.

[fol. 437] Exhibit No. —. Page No. 17. Witness: W. M. Burn

Great Northern Railway Company

Terminal Cost Studies (Service Performed by Yard Switch Engines Only)
June 9, 1934, to June 15, 1934

Summary of Cost Per Element to Determine Switching Costs Per Loaded Car

State of Washington—Intrastate Carload Traffic

Item	Movement of Traffic From	To	Elements of Switching Service Performed	Cost Per Car	No. of Cars	Total Costs
Delta-Everett Terminal:						
G. N. Line Haul Cars Terminated						
1.	Delta Class. Yd.	Industries	(1-2-12-12-2-1	$5.44	316	$1,719.04
			(1-2-12-12-2-7-1	6.07	37	224.59
2.	Lowell Yard	Industries	(2-1-2-12-12-2-1	6.11	12	73.32
			(2-1-4-2-12-12-2-1	6.82	5	34.10
G. N. Line Haul Cars Originated						
3.	Industries	Delta Class. Yd.	1-2-12-12-2-1	$5.44	3	$16.32
4.	Industries	Lowell Yard	1-2-12-12-2-1-2	6.11	4	24.44
G. N. Line Haul Cars Passing Through Terminal (Loads)						
5.	Delta Class. Yd.	Bayside and Lowell	1-2	$1.02	61	$62.22
6.	Delta Class. Yd.	Delta Class. Yd.	-1-	.35	3	1.05
7.	Lowell Yard	Interchange Tracks	2-1-3	1.69	15	25.35
8.	Interchange Tracks	Delta Class. Yard	3-1	1.02	4	4.08
	Total			....	...	$2,184.51

For explanation of above Code numbers under "Elements of Switching Service Performed" and switching cost per element of service, see Page 22.

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Item	Movement of Traffic From	To	Elements of Switching Service Performed	Cost Per Car	No. of Cars	Total Costs
	Interbay-Seattle Terminal: G. N. Line Haul Cars Terminated					
1.	Interbay Class. Yd.	Smith Cove	1-3-10-10-3-1	$3.32	68	$225.76
2.	Interbay Class. Yd.	Seattle Interchange Tracks	(Loaded = 1-2-5	1.76	114	200.64
			(Empty = 5-2-1	1.76	83	146.08
3.	Interbay Class Yd.	N. P. Railway-Interbay	(Loaded = 1-6	1.07	32	34.24
			(Empty = 6-1	1.07	17	18.19
4.	Interbay Class. Yd.	N. P. Railway-Interbay	1-20-1-6-6-1	1.99	1	1.99
5.	Interbay Class. Yd.	Ballard	1-4-12-12-4-1	$6.87	2	$13.74
6.	Interbay Class. Yd.	Seattle Interchange	1-20-2-5	2.26	18	40.68
7.	Interbay Class. Yd.	Seattle Industries—Fifth Avenue	1-2-9-9-2-1	5.57	9	50.13
8.	Interbay Class. Yd.	Seattle Industries—Fifth Avenue	1-20-1-2-9-9-2-1	6.49	1	6.49
9.	Interbay Class. Yd.	Seattle Team Track	1-21-21-2-14-14-2-1	4.82	1	4.82
10.	Interbay Class. Yd.	Seattle Team Track	1-2-14-14-2-1	3.56	1	3.56
11.	Interbay Class. Yd.	Smith Cove	1-3-3-1	1.60	1	1.60
12.	Interbay Class. Yd.	Smith Cove—thence to N. P.—Interbay	1-3-3-1-6	2.26	1	2.26
13.	Seattle Yard	Seattle Industries—Fifth Avenue	(Loaded = 1-9	2.24	3	6.72
			(Empty = 9-1	2.24	1	2.24
	G. N. Line Haul Cars Originated					
14.	Seattle Frt. Hs. Track	Interbay Class. Yd.	(Empty = 1-2-13	$1.48	4	$5.92
			(Loaded = 13-2-1	1.48	6	8.88
15.	Seattle Interchange	Interbay Class. Yd.	(Empty = 1-2-5	1.76	26	45.76
			(Loaded = 5-2-1	1.76	43	75.68
16.	Seattle Interchange	Seattle Yard	5-1	1.21	19	22.99
17.	Seattle Interchange	Interbay Class. Yd.	5-2-20-1	2.26	3	6.78
18.	Seattle Industries—2nd and Occidental Aves.	Interbay Class Yd.	8-2-1	2.57	1	2.57
19.	Seattle Team Track	Interbay Class. Yd.	1-2-14-14-2-1	3.56	1	3.56
20.	Smith Cove Industries	Interbay Class. Yd.	10-2-1	1.82	1	1.82
21.	Ballard	Interbay Class. Yd.	12-4-20-1	3.94	1	3.94
	G. N. Line Haul Cars Passing Through Terminal (Loads)					
22.	Interbay Class. Yd.	Interbay Class. Yd.	1-1	$.83	151	$125.33
	Total			....	...	$1,062.37

For explanation of above Code numbers under "Elements of Switching Service Performed" and switching cost per element of service, see Page 21.

[fol. 438] Exhibit No. —. Page No. 18. Witness: W. M. Burn

Great Northern Railway Company

Terminal Cost Studies (Service Performed by Yard Switch Engines Only)
June 9, 1934, to June 15, 1934

Summary of Cost Per Element to Determine Switching Costs Per Loaded Car

State of Washington—Intrastate Carload Traffic

Item	Movement of Traffic From	To	Elements of Switching Service Performed	Cost Per Car	No. of Cars	Total Costs
Tacoma Terminal:						
G. N. Line Haul Cars Terminated						
1.	Classification Yard	Industries and Interchange	(Loaded = 1–12	$2.17	50	$108.50
			(Loaded = 1–4–12	3.77	1	3.77
			(Empty = –12–	1.39	11	15.29
			(Empty = 12–1	2.17	16	34.72
G. N. Line Haul Cars Originated						
			(Empty = –12–	$1.39	7	$9.73
2.	Industries and Interchange	Classification Yard	(Loaded = 12–1	2.17	19	41.23
			(Loaded = 12–4–1	3.77	2	7.54
G. N. Line Haul Cars Passing Through Terminal (Loads)						
3.	Classification Yard	Classification Yard	1–7	$2.75	1	$2.75
	Classification Yard	Clasification Yard	–1–	.78	7	5.46
	Total			....	...	$228.99

For explanation of above Code numbers under "Elements of Switching Service Performed" and switching cost per element of service, see Page 22.

Exhibit No. —. Page No. 18 Witness: W. M. Burn—Continued

Item	Movement of Traffic From	To	Elements of Switching Service Performed	Cost Per Car	No. of Cars	Total Costs
Bellingham Terminal:						
G. N. Line Haul Terminated						
1.	Classification Yard	Industries	1-4-12-12-1	$2.65	8	$21.20
	Classification Yard	Industries	1-12-12-1	2.37	38	90.06
	Classification Yard	Industries	1-12	1.19	1	1.19
2.	Classification Yard	Interchange Track	1-3-3-1	1.58	3	4.74
G. N. Line Haul Cars Originated						
3.	Industries	Classification Yard	1-12-12-4-1	$2.65	41	$108.65
	Industries	Classification Yard	1-12-12-1	2.37	19	45.03
4.	Interchange Track	Classification Yard	3-1	$.79	1	.79
5.	Interchange Track	Classification Yard	1-3-3-4-1	1.86	1	1.86
	Total			....	....	$273.52

G. N. Line Haul Cars Passing Through Terminal (Loads)

BLANK

(Handled by Road Trains)

Grand Total—Intrastate Carload Traffic
Yard Switching Cost = $5,204.97*

*(a)	Intrastate Revenue Net Ton Miles Applicable to foregoing analysis—from Way Bill records during 7-day study period, November, 1933	3,862,343
(b)	Intrastate Revenue Net Ton Miles—from Conductor's reports for actual train movements during same study period in November, 1933	4,120,736
(c)	Per Cent (b) of (a)	106.69%
(d)	Yard Switching cost applicable to revenue ton miles in actual train movement ($5205 x 106.69%)	$5,553

For explanation of above Code numbers under "Elements of Switching Service Performed" and switching cost per element of service see Page 22.

Exhibit No. —. Page No. 19. Witness: W. M. Burn

Great Northern Railway Company

Terminal Cost Studies (Service Performed by Yard Switch Engines Only)
June 9, 1934, to June 15, 1934

Summary of Costs Per Element to Determine Switching Costs Per Loaded Car

State of Washington—L. C. L. Traffic

Item	Movement of Traffic From	To	Elements of Switching Service Performed	Cost Per Car	No. of Cars	Total Costs
	Hillyard—Spokane Terminal:					
	G. N. Line Haul Cars Terminated					
1.	Spokane Class. Yard	Spokane Frt. House	2-7-7-2	$2.27	11	$24.97
2.	Spokane Class. Yard	Spokane Frt. House	2-7	1.13	10	11.30
3.	Spokane Class. Yard	Spokane Frt. House	2-7-7-2-3-1	3.35	1	3.35
4.	Spokane Class. Yard	Spokane Frt. House	4-2-7	1.77	1	1.77
5.	Hillyard Class. Yard	Spokane Frt. House	1-3-2-7	2.22	9	19.98
	G. N. Line Haul Cars Originated					
6.	Spokane Frt. House	Spokane Class. Yd.	2-7-7-2	$2.27	9	$20.43
7.	Spokane Class. Yd.	Spokane Frt. House	1-3-2-7-7-2	3.35	4	13.40
8.	8. Spokane Interchange and Frt. House	Spokane Class Yd.	4-2-7-7-2	2.90	1	2.90
9.	Spokane Frt. House	Hillyard Class. Yd.	2-7-7-2-3-1	3.35	9	30.15
10.	Spokane Frt. House	Hillyard Class. Yd.	1-3-2-7-7-2-3-1	4.43	4	17.72
11.	Spokane Frt. House	Hillyard Class. Yd.	4-2-7-7-2-3-1	3.98	1	3.98
12.	Spokane Frt. House	Hillyard Class. Yd.	7-2-3-1	2.22	1	2.22
13.	Hillyard Freight House	Spokane Frt. House and Interchange	1-7-7-1-2-2-7-7-4	5.19	2	10.38
	Total					$162.55

For explanation of above Code numbers under "Elements of Switching Service Performed" and switching cost per element of service, see Page 21.

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Exhibit No. —. Page No. 19 Witness: W. M. Bnrn—Continued

Item	Movement of Traffic From	To	Elements of Switching Service Performed	Cost Per Car	No. of Cars	Total Costs
Appleyard—Wenatchee Terminal:						
G. N. Line Haul Cars Terminated						
1.	Classification Yd	Freight House	Loaded = 1-2-10	$2.13	39	$83.07
	Freight House		Empty = -10-	1.19	5	5.95
	Freight House	Class. Yard	Empty = 10-2	1.70	7	11.90
	Freight House	Class. Yard	Empty = 10-2-1	2.13	7	14.91
G. N. Line Haul Cars Originated						
2.	-0-	Freight House	Empty = -10-	$1.19	2	$2.38
	Classification Yd	Freight House	Empty = 1-2-10	2.13	10	21.30
	Freight House	Classification Yd	Loaded 10-2-1	2.13	12	25.56
G. N. Line Haul Cars Passing Through Terminal (Loads)						
3.	Classification Yd	Classification Yd	-1-	$ .43	24	$10.32
	Total			....	...	$175.39
Delta-Everett Terminal:						
G. N. Line Haul Cars Originated						
1.	Freight House	Class. Yard	1-2-10-10-2-1	$4.23	5	$21.15
	Freight House	Class. Yard	1-2-10-2	2.79	2	5.58
	Freight House	Class. Yard	10-2-1	2.12	8	16.96
G. N. Line Haul Shipments Passing Through Terminal (Loads)						
2.	Class. Yard	Freight House	1-2-10	$2.12	2	$4.24
3.	Class. Yard	Lowell	1-2	1.02	24	24.48
	Total			....	...	$72.41

For explanation of above Code numbers under "Elements of Switching Service Performed" and switching cost per element of service, see Page 21.

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Exhibit No.—. Page No. 20. Witness: W. M. Burn

Great Northern Railway Company

Terminal Cost Studies (Service Performed by Yard Switch Engines Only)
June 9, 1934, to June 15, 1934

Summary of Costs Per Element to Determine Switching Costs Per Loaded Car

State of Washington—L. C. L. Traffic

Item	Movement of Traffic From	To	Elements of Switching Service Performed	Cost Per Car	No. of Cars	Total Costs
	Interbay—Seattle Terminal					
	G. N. Line Haul Cars Terminated					
1.	Interbay Class. Yd.	Seattle Frt. House	(Loaded = 1-2-13	$1.48	30	$44.40
			(Empty = 13-2-1	1.48	9	13.32
2.	Interbay Class. Yd.	Seattle Interchange	1-2-5-5-2-1	3.51	1	3.51
3.	Seattle (Holgate St.)	Seattle Frt. Ho	(Loaded = -13-	.52	7	3.64
			(Empty = -13-	.52	1	.52
	G. N. Line Haul Cars Originated					
4.	Seattle Freight Ho	Seattle Yard	(Empty = 1-21-21-2-13	$2.73	18	$49.19
			(Loaded = -13-	.52	25	13.00
5.	Seattle Freight Ho	Seattle Yard	13-13	1.04	1	1.04
6.	Seattle Freight Ho	Interbay Class. Yd	(Empty = 1-2-13	1.48	5	7.40
			(Loaded = 13-2-1	1.48	41	60.68
	G. N. Line Haul Shipments Passing Through Terminal					
7.	Interbay Class. Yd.	Interbay Class. Yd	1-1	$.83	8	$6.64
	Total			....	...	$203.29

For explanation of above Code numbers under "Elements of Switching Service Performed" and switching cost per element of service, see Page 22.

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Exhibit No. —. Page No. 20 Witness: W. M. Burn—Continued

Item	Movement of Traffic From	To	Elements of Switching Service Performed	Cost Per Car	No. of Cars	Total Costs
Tacoma Terminal:						
G. N. Line Haul Cars Terminated						
1.	Classification Yd.	Freight House	(Loaded = 1–10	$2.89	11	$31.79
			(Empty = –10–	2.11	2	4.22
G. N. Line Haul Cars Originated						
2.	Freight House	Classification Yd.	(Empty = 1–10	$2.89	2	$5.78
			(Loaded = 10–1	2.89	4	11.56
	Total			....	...	$53.35
Bellingham Terminal:						
G. N. Line Haul Cars Terminated						
1.	Classification Yd.	Freight House	1–10–10–1–	$2.00	3	$6.00
2.	Classification Yd.	Freight House	1–10	1.00	1	1.00
G. N. Line Haul Cars Originated						
3.	Freight House	Classification Yd.	1–10	1.00	2	2.00
	Total			....	...	$9.00

Grand Total L. C. L. Traffic

Yard Switching Cost..... $675.99
*Amount chargeable to Intrastate L. C. L. Traffic—
77.78% of $675.99 = $525.79

For explanation of above Code numbers under "Elements of Switching Service Performed" and switching cost per element of service see Page 22.

* Based on number of tons of Intrastate L. C. L. traffic contained in cars loaded with both Intrastate and Interstate L. C. L. shipments

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Exhibit No.—. Page No. 21. Witness: W. M. Burn

Great Northern Railway Company

Statement Showing Output per Engine Hour (Measured in Cars) and Cost per Car for the Various Elements of Switching Service

Terminal Study June 9, 1934 to June 15, 1934

Item No.	Description of Service	Total hours	Total cars	No. cars handled per hour	Cost per engine hour	Cost per car
	Hillyard-Spokane Terminal					
1.	Classification—Hillyard	189.25	4,207	22.23	$12.34	$ .555
2.	Classification—Spokane	49.50	1,137	22.97	12.34	.537
3.	Transfer Service—Between Hillyard and Spokane	60.58	1,413	23.32	12.34	.529
4.	Interchange—Spokane (All Lines)	62.75	1,225	19.52	12.34	.632
5.	Industrial Swg.—Hillyard	34.00	362	10.65	12.34	1.159
6.	Industrial Swg.—Spokane	11.75	71	6.04	12.34	2.043
7.	Freight House Switching	33.83	700	20.69	12.34	.596
8.	Team Track Switching	6.50	63	9.69	12.34	1.273
9.	Weighing Cars	16.33	308	18.86	12.34	.654
	Appleyard-Wenatchee Terminal					
1.	Classification	54.08	1,656	30.62	$13.21	$.431
2.	Transfer Service	18.50	484	26.16	13.21	.505
4.	Weighing Cars	2.25	38	16.89	13.21	.782
5.	Icing Cars	23.83	429	18.00	13.21	.734
7.	Swg. Shop Repair Tracks	5.50*	84	15.27	13.21	.865
10.	Freight House Switching	7.50	83	11.07	13.21	1.193
12.	Industrial Switching	57.92	529	9.13	13.21	1.447
	Delta-Everett Terminal					
1.	Classification	52.67	1.877	35.64	$12.40	$.348
2.	Transfer Service	49.17	907	18.45	12.40	.672
3.	Handling Cars at Connections	6.83	127	18.59	12.40	.667
4.	Weighing Cars	7.42	129	17.39	12.40	.713
7.	Swg. Shop Repair Tracks	14.92	295	19.77	12.40	.627
10.	Freight House Switching	2.83	32	11.31	12.40	1.096
12.	Industrial Switching	75.50	551	7.30	12.40	1.699

* Excludes 2.92 hours for Store Dept. Switching, which is included in Item 7—Page 27.

Note.—For data shown in first three columns above, see Pages 25 and 27. For "cost per engine hour" see Page 24.

Great Northern Railway Company

Statement Showing Output per Engine Hour (Measured in Cars) and Cost per Car for the Various Elements of Switching Service

Terminal Study June 9, 1934 to June 15, 1934

Item No.	Description of Service	Total hours	Total cars	No. cars handled per hour	Cost per engine hour	Cost per car
	Interbay-Seattle Terminal					
1.	Classification	172.58	4,853	28.12	$11.64	$.414
2.	Transfer—Btw. Interbay and Seattle	57.25	1,223	21.36	11.64	.545
3.	Transfer—Btw. Interbay and Smith Cove	8.67	261	30.10	11.64	.387
4.	Transfer—Btw. Interbay and Ballard	10.67	73	6.84	11.64	1.702
5.	Interchange—Seattle (All Lines)	23.58	345	14.63	11.64	.796
6.	Interchange—Interbay (N. P.)	6.08	108	17.76	11.64	.655
8.	Industrial—Seattle (Second and Occidental Aves.)	25.25	182	7.21	11.64	1.614
9.	Industrial—Seattle (Fifth Ave.)	40.50	258	6.37	11.64	1.827
10.	Industrial—Smith Cove	18.83	255	13.54	11.64	.860
12.	Industrial—Ballard	14.25	126	8.84	11.64	1.317
13.	Freight House—Seattle	27.25	610	22.39	11.64	.520
14.	Team Track	22.75	322	14.15	11.64	.823
20.	Weighing Cars	10.92	253	23.17	11.64	.502
21.	Shop Repair and Store Tracks	2.58	48	18.60	11.64	.626
	Bellingham Terminal					
1.	Classification	10.58	334	31.57	$8.55	$.271
3.	Handling cars at connections	2.50	41	16.40	8.55	.521
4.	Weighing Cars	2.00	62	31.00	8.55	.276
10.	Freight House Switching	.17	2	11.76	8.55	.727
12.	Industrial Switching	31.00	290	9.35	8.55	.914
	Tacoma Terminal					
1.	Classification	19.86	272	13.70	$10.68	.780
4.	Weighing cars	2.24	15	6.70	10.68	1.594
7.	Swg. Shop Repair Tracks	.74	4	5.41	10.68	1.974
10.	Freight House and Team Trk. Swg	5.34	27	5.06	10.68	2.111
12.	Industrial and Interchange Swg.	25.30	194	767	10.68	1.392

Note.—For data shown in first three columns above, see Pages 26 and 27. For "Cost per Engine Hour" see Page 24.

[fol. 443] Exhibit No. —. Page No. 23. Witness: W. M. Burn

Great Northern Railway Company

Terminal Cost Study

June 9, 1934, to June 15, 1934 (Seven Days)

Statement of Engine Hour Costs by Stations

Account No.	Description	Hillyard-Spokane Washington	Appleyard-Wenatchee Washington	Delta-Everett Washington	Interbay-Seattle Washington	Tacoma Washington	Bellingham Washington
	Maintenance of Way and Structures						
201	Superintendence	$75.68	$37.25	$33.41	$54.44	$8.56	$3.75
	Structures						
202	Roadway Maintenance	88.05	14.83	13.28	25.76	6.61	1.97
208	Bridges, Trestles and Culverts	.....	.32	3.57	3.41	.....	.....
212	Ties	131.74	132.29	85.89	152.73	21.39	17.61
214	Rails	24.58	3.67	10.62	20.66	3.86	.55
216	Other Track Material	62.44	32.46	36.58	65.75	4.72	1.91
218	Ballast	.....	.....	.12	Cr.- .46	.....	.....
220	Track Laying and Surfacing	185.23	98.46	67.83	105.98	31.82	6.83
227	Stations and Office Buildings	6.18	1.24	1.75	4.00	.15	.06
231	Water Stations	5.82	1.29	.57	.44	.27	.22
233	Fuel Stations	1.61	1.32	4.13	.81	.04	.03
235	Shops and Engine Houses	93.23	16.68	40.54	33.72	.70	1.25
249	Signals and Interlockers	15.85	.....	6.51	29.42	.....	.....
274	Injuries to Persons	11.94	.588	5.27	8.59	1.35	.59
275	Insurance	3.25	1.60	1.44	2.34	.37	.16
276	Stationery and Printing	.72	.35	.32	.52	.08	.04
277	Other Expenses	.85	.42	.38	.61	.10	.04
	Total	$707.17	$348.06	$312.21	$508.72	$80.02	$35.01
	Maintenance of Equipment						
301	Superintendence	$38.67	$11.27	$13.12	$24.47	$8.85	$1.85
302	Shop Machinery	8.18	2.39	2.78	5.18	1.87	.39
308	Steam Locomotives—Repairs	749.71	226.61	259.16	463.85	157.69	34.72
309	Steam Locomotives—Depreciation	184.43	45.66	57.86	127.34	56.22	10.09
310	Steam Locomotives—Retirements	.....	.....	.....	.....	.....	.....
332	Injuries to Persons	4.04	1.18	1.37	2.56	.92	.19
333	Insurance	3.58	1.04	1.21	2.26	.82	.17
334	Stationery and Printing	.46	.13	.16	.29	.11	.02
335	Other Expenses	.19	.06	.06	.12	.04	.02
	Total	$989.26	$288.34	$335.72	$626.07	$226.52	$47.45

[fol. 444] Exhibit No. —. Page No. 24. Witness: W. M. Burn

Great Northern Railway Company

Terminal Cost Study

June 9, 1934, to June 15, 1934 (Seven Days)

Statement of Engine Hour Costs by Stations

Account No.	Description	Hillyard-Spokane Washington	Appleyard-Wenatchee Washington	Delta-Everett Washington	Interbay-Seattle Washington	Tacoma Washington	Bellingham Washington
	Maintenance of Way and Transportation						
371	Superintendence	$168.44	$51.05	$57.07	$119.71	$22.12	$9.46
377	Yardmasters and Yard Clerks	1,025.42	376.61	338.11	723.77	41.79	.....
378	Yard Conductors and Brakemen	1,576.40	463.20	535.85	1,177.10	256.90	128.35
379	Yard Switch and Signal Tenders	25.19	10.88	20.53	19.31	4.56	9.13
380	Yard Enginemen	1,071.05	323.10	361.05	754.50	168.70	86.55
382	Fuel for Yard Locomotives	1,030.67	309.10	356.18	685.96	182.30	56.38
385	Water for Yard Locomotives	33.41	9.89	11.33	24.60	5.51	2.62
386	Lubricants for Yard Locomotives	22.97	6.99	8.01	13.17	3.64	1.41
387	Other Supplies for Yard Locomotives	15.95	4.82	5.53	9.80	1.66	.10
388	Enginehouse Expenses—Yard	396.59	117.95	140.06	285.86	44.26	17.28
389	Yard Supplies and Expenses	30.26	14.85	16.21	19.13	.....	1.17
404	Signal and Interlocker Operation	154.65	.....	37.45	72.97	.....	.....
405	Crossing Protection	19.70	.....	.17	42.19	.....	.50
406	Drawbridge Operation	.....	.....	.....	9.76	.....	.....
410	Stationery and Printing	14.21	4.31	4.82	10.10	1.87	.80
411	Other Expenses	9.88	3.00	3.35	7.02	1.30	.56
414	Insurance	7.19	2.18	2.44	5.11	.94	.40
	Total	$5,601.98	$1,697.93	$1,898.16	$3,980.06	$735.55	$314.71

	General						
451	Salaries and Expenses of General Officers	$45.49	$14.53	$15.86	$31.89	$6.48	$2.48
452	Salaries and Expenses of Clerks and Attendants	147.01	47.03	51.30	103.05	21.00	8.00
453	General Office Supplies and Expenses	10.26	3.30	3.58	7.18	1.47	.56
454	Law Expenses	47.58	15.22	16.60	33.36	6.79	2.59
455	Insurance	.66	.21	.23	.46	.09	.03
458	Stationery and Printing	8.45	2.69	2.94	5.93	1.19	.46
460	Other Expenses	110.51	34.91	38.30	77.71	15.53	6.06
	Total	$369.96	$117.89	$128.81	$259.58	$252.55	$20.18
	Summary						
	M. of W & S	707.17	$348.06	$312.21	$508.72	$80.02	35.01
	M. of E	989.26	288.34	335.72	626.07	226.52	47.45
	Transportation	5,601.98	1,697.93	1,898.16	3,980.06	735.55	314.71
	General	369.96	117.89	128.81	252.55	52.55	20.18
	Grand Total	$7,668.37	$2,452.22	$2,674.90	$5,374.43	$1,094.64	$417.35
	Net Engine Hours*	621.50	185.67	215.67	461.83	102.50	48.83
	Engine-Hour Costs	$12.34	$13.21	$12.40	$11.64	$10.68	$8.55

*For details see Pages 25, 26 and 27.

[fol. 445] Exhibit No. —

Page No. 25

Witness: W. M. Burn

Great Northern Railway Company

Hillyard-Spokane, Washington

June 9, 1934, to June 15, 1934

Engine Hours For Each Element of Switching Service

Elements of service	Engine hours
1. Classification—Hillyard	189.25
2. " —Spokane	49.50
3. Transfer—Between Hillyard and Spokane	60.58
4. Interchange—Spokane (All Lines)	62.75
5. Industrial—Hillyard	34.00
6. " —Spokane	11.75
7. Freight House	33.83
8. Team Track	6.50
9. Weighing Cars	16.33
10. Icing Cars	10.00
11. Swg. Shop and Store Dept. Tracks	74.25
12. Swg. Car Repair Tracks	14.67
13. Work for M. of W. Dept.	.42
14. All Passenger Work	52.75
15. Helping Road Trains (Freight)	1.42
16. Swg. Co. Fuel Docks, Etc. (Road Prop.)	3.50
Other Service:	
Waiting for Engine	13.83
Fuel and Water	14.33
Lunch	28.00
Swg. Co. Fuel Docks, Etc. (Yard Prop.)	1.17
Total Other Service	57.33
Grand Total—All Elements	678.83
Number of Crews	84
*Net Engine Hours (Productive Time)	621.50

* Items 1 to 16, Inclusive.

[fol. 446] Exhibit No. —

Page No. 26

Witness: W. M. Burn

Great Northern Railway Company

Interbay-Seattle, Washington

June 9, 1934, to June 15, 1934

Engine Hours For Each Element of Switching Service

Elements of service	Engine hours
1. Classification	172.58
2. Transfer—Between Interbay and Seattle	57.25
3. " — " " " Smith Cove	8.67
4. " — " " " Ballard	10.67
5. Interchange—Seattle (All Lines)	23.58
6. Interchange—Interbay (N. Pacific Ry.)	6.08
7. Interchange—Ballard (N. P. and P. N. T.)	.25
8. Industrial—Seattle (Second and Occidental Aves.)	25.25
9. " —Seattle (Fifth Avenue)	40.50
10. " —Smith Cove	18.83
11. " —Interbay	–0–
12. " —Ballard	14.25
13. Freight House—Seattle	27.25
14. Team Track	22.75
15. Repair Tracks—Interbay	9.67
16. Passenger Work	1.75
17. Helping Road Trains	3.83
18. Helping Transfers	–0–
19. Work Train Service	2.00
20. Weighing Cars	10.92
21. Shop Repair and Store Dept. Tracks	2.58
22. Swg. Company Fuel Docks, Etc. (Road Prop.)	3.17

Other Service:

Elements of service	Engine hours
Waiting for Engine	6.50
Fuel and Water	11.33
Lunch	19.67
Swg. Company Fuel Dockets, Etc. (Yard Prop.)	.67
Total Other Service	38.17
Grand Total—All Elements	500.00
Number of Crews	59
*Net Engine Hours (Productive Time)	461.83

* Items 1 to 22, Inclusive.

[fols. 447-448]

Exhibit No. —. Page No. 27. Witness: W. M. Burn

Great Northern Railway Company

Engine Hours for Each Element of Switching Service
June 9, 1934 to June 15, 1934

Element of Service	Appleyard Wenatchee Wash.	Delta-Everett Wash.	Tacoma Wash.	Bellingham Wash.
1. Classification	54.08	52.67	19.86	10.58
2. Transfer Service	18.50	49.17	.....	.....
3. Handling Cars at Connections	.....	6.83	.....	2.50
4. Weighing Cars	2.25	7.42	2.24	2.00
5. Icing Cars	23.83	.....	.....	.....
6. Swg. Co. Fuel Docks (Road Prop.)	1.75	.17	.....	.....
7. Swg. Shop Repair and Store Dept. Tracks	8.42	14.92	.74	.....
8. Work for M. of W. Dept.	.75	1.33	.....	1.83
9. All Passenger Work	9.50	1.75	41.43	.....
10. Freight House Switching	7.50	2.83	5.34	.17
11. Team Track Switching	.....	3.08	.....	.75
12. Industrial Switching	57.92	75.50	25.30	31.00
13. Helping Road Trains (Freight)	1.17	.....	7.59	.....
Other Service:				
Waiting for Engine	5.00	1.00	3.50	1.50
Fuel and Water	1.75	4.33	1.33	1.00
Lunch	8.33	9.34	4.67	2.00
Cleaning Fire	.....	.....	.....	.....
Tie Up Time	.....	.....	.....	.....
Helper Service—Yard	.....	.....	.....	.....
Swg. Co. Fuel Docks—Yard Prop.	.25	.08	.....	.....
Total Other Service	15.33	14.75	9.50	4.50
Grand Total—All Elements	201.00	230.42	112.00	53.33
Number of Crews	25	2[illegible]	14	6
*Net Engine Hours (Productive Time)	185.67	215.67	102.50	48.83

*Items 1 to 13, inclusive.

[fol. 449] IN SUPREME COURT OF WASHINGTON

Title of Action

No. 25683

STATE OF WASHINGTON, Appellant, Plaintiff,

vs.

GREAT NORTHERN RY. CO., a Corp., Respondent, Defendant

Attorneys: G. W. Hamilton. R. G. Sharpe. Thomas Balmer. Edwin C. Matthias.
Nature of Action: Thurston Co. #15417. Wright, J.

DOCKET ENTRIES

Date 1935	Proceedings had
Apr. 19.	Transcript.
May 10.	Statement of Facts.
10.	Exhibits—Package in pouch.
May 3.	Ent'd Set May 28—En Banc.
24.	Appellant's abstract of Record (8 Vols.) on shelf.
24.	25 Brief of Appellant—Part II (in #25684 also).
25.	25 Brief of Appellant—Part I (in #25684 also).
27.	25 Brief of Respondent & service.
June 12.	25 Reply brief (in #25684 also).
17.	Additional authority (in #25684 also) letter.
Aug. 13.	Opinion—reversed Per Curiam.
Sep. 13.	Judgment.
13.	Petition for appeal.
13.	Assignment of Errors, etc.
13.	Cost & Supersedeas Bond.
13.	Order allowing appeal.
13.	Citation & service.
13.	Acknowledgment of service of petition, etc.
13.	Statement as to jurisdiction on appeal.
13.	Ent'd judgment 34-46.
Oct. 16.	Præcipe of respondent.
18.	Supplemental præcipe to omit summons.
18.	Appellant's præcipe for transcript.

[fol. 450] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

APPELLEE'S PRÆCIPE FOR TRANSCRIPT ON APPEAL—Filed Oct. 18, 1935

To the Clerk of the Supreme Court of the State of Washington:

In preparing the transcript on the appeal of the above case to the Supreme Court of the United States, as provided by Rule 10 of the Supreme Court of the United States, please incorporate in said transcript the following additional portions of the record:

(1) Rule XVI of the "Rules of Pleadings, Procedure and Practice" adopted by the Supreme Court of the State of Washington pursuant to Chapter 118, Laws of 1925, Extraordinary Session, and effective April 1, 1931;

(2) Rules VI and VII, and Rule VIII, subdivisions 1 and 2, of the Rules of the Supreme Court of the State of Washington, and also Amendment to Rule VI which became effective March 1, 1935;

(3) Appellant's Abstract of the Record;

(4) Brief of Appellant;

(5) All entries in Appearance Docket of Supreme Court of the State of Washington relating to Appeal No. 25,683 therein;

(6) Pages 12 to 27 inclusive, of Defendant's Exhibit "11";

[fol. 451] (7) Appellee's Præcipe for Transcript on Appeal.

G. W. Hamilton, Attorney General; R. G. Sharpe, Assistant Attorney General, Attorneys for Appellee.

[File endorsement omitted.]

[fol. 452] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 453] IN SUPREME COURT OF THE UNITED STATES

APPELLANT'S STATEMENT OF POINTS TO BE RELIED UPON AND PARTS OF RECORD NECESSARY FOR THE CONSIDERATION THEREOF—Filed Nov. 7, 1935

Appellant intends to rely upon the following points as ground for the reversal of the judgment of the Supreme Court of the State of Washington, from which this appeal is taken:

(1) The Supreme Court of the State of Washington having found that appellant is engaged in both intrastate commerce and interstate commerce, and having held that as a matter of law it cannot withdraw from its intrastate business without also withdrawing from its interstate business, erred in holding that Chapter 191, Laws of 1933, does not violate Article I, Section 8 of the Constitution of the United States.

(2) The Supreme Court of the State of Washington having found that appellant's interstate business and intrastate business in Washington is inextricably commingled, and that as a matter of fact and as a practical matter appellant cannot withdraw from its intrastate business without also withdrawing from its interstate business, erred in holding that Chapter 191, Laws of 1933, does not violate Article I, Section 8 of the Constitution of the United States.

(3) The Supreme Court of the State of Washington having found that appellant's intrastate business is conducted at a loss which must be borne by the income from its interstate business, erred in deciding that the tax imposed by Chapter 191, Laws of 1933, does not violate Article I, Sec-
[fol. 454] tion 8 of the Constitution of the United States.

(4) The Supreme Court of the State of Washington having found that appellant's intrastate business is conducted at a loss which must be borne by income from its interstate business or income earned or received in other states, erred in refusing to hold that Chapter 191, Laws of 1933, violates the due process clause of the 14th Amendment to the Constitution of the United States.

(5) The Supreme Court of the State of Washington having found that appellant's intrastate business is conducted

at a loss which must be borne by income from its interstate business, erred in holding Chapter 191, Laws of 1933, and the tax imposed thereby, does not violate Article I, Section 8 of the Constitution of the United States, for the stated reason that appellant has not exhausted its remedy (by writ of review) to obtain intrastate rate increases and because that circumstance is immaterial, not supported by and is contrary to the facts found in Finding 18.

(6) The Supreme Court of the State of Washington for each of the reasons contained in the preceding points erred in reversing the judgment of the Superior Court of Thurston County and in rendering judgment in favor of the State of Washington against appellant for the tax imposed by Chapter 191, Laws of 1933, in the sum of $12,988.35.

Appellant thinks the following parts of the record are necessary for the consideration of said points and requests that said parts of the record be printed:

Part of record to be printed	Pages of Washington Supreme Court Clerk's Transcript
1. Complaint	1–8
2. Answer	9–28
3. Defendant's Supplemental Answer Amending Fourth Affirmative Defense	29–38
4. Reply	39–56
5. Interrogatories Propounded by Plaintiff to the Defendant	57–60
[fol. 455] 6. Defendant's Answers to Interrogatories	61–67
7. Defendant's Amended Answers to Interrogatories	68–71
8. Findings of Fact and Conclusions of Law	72–95
9. Judgment of the Superior Court	96
10. Notice of Appeal to the Supreme Court of the State of Washington	97
11. Assignments of Error in Appellant's Brief Filed in Office of the Clerk of the Supreme Court, May 24, 1935	98–102
12. Opinion in Cause No. 25683	103
13. Opinion in Cause No. 25684	104–119
14. Judgment of the Supreme Court	120
15. Petition for Appeal	121–123

Part of record to be printed	Pages of Washington Supreme Court Clerk's Transcript
16. Assignment of Errors and Prayer for Reversal	124–126
17. Statement as to Jurisdiction on Appeal	127–137
18. Order Allowing Appeal	138–139
19. Cost and Supersedeas Bond	140–142
20. Acknowledgment of Service of Petition for Appeal, Order Allowing Appeal, Assignment of Errors and Prayer for Reversal, and Statement as to Jurisdiction	143
21. Citation, with Acknowledgment of Service	144–145
22. Præcipe for Transcript on Appeal	146–147
23. Supplemental Præcipe as to Pages "A" to "F" inclusive, and pages 1 to 11 inclusive of Defendant's Exhibit "11"	148–A
24. Pages "A" to "F" inclusive and pages 1 to 11 inclusive of Defendant's Exhibit "11"	

Dated this 28th day of October, 1935.

Thomas Balmer, Edwin C. Matthias, Office Address: 404 Union Street, Seattle, Washington; F. S. Dorety, Office Address: 1120 Great Northern Building, St. Paul, Minnesota, Attorneys for Appellant.

[fol. 456] Service of a copy of the foregoing Statement acknowledged this 29th day of October, 1935.

G. W. Hamilton, R. G. Sharpe, Attorneys for Appellee. Office Address: Temple of Justice, Olumpia, Washington.

[fol. 457] [File endorsement omitted.]

[fol. 458] IN SUPREME COURT OF THE UNITED STATES

APPELLEE'S DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD TO BE PRINTED, AS PROVIDED BY PARAGRAPH 9, RULE 13—Filed Nov. 7, 1935

Comes now the Appellee and designates in writing additional parts of the record which it thinks material, and which should be printed, in addition to those parts hereto-

fore designated by Appellant, which additional parts are as follows:

Part of record to be printed	Pages of Washington Supreme Court Clerk's Transcript
1. Appellee's præcipe for Transcript on appeal	
2. Rule XVI of the "Rules of Pleading, Procedure and Practice" of the Supreme Court (Item 1 of Appellee's Præcipe	153
3. Rules VI and VII, and Rule VIII, subdivisions 1 and 2, of the Rules of the Supreme Court of the State of Washington, and also Amendment to Rule VI which became effective March 1, 1935 (Item 2 Appellee's Præcipe)	149–153
4. All of the following portions of Appellant's Abstract of the Record (Item 3 of Appellee's Præcipe): Pages 1 to 3 inclusive, pages 41 to 146, inclusive, pages 166 to 241, inclusive, and page 266	154–420
5. All of the following portions of Appellant's Brief, Volume one, (Item 4 of Appellee's Præcipe): Pages 3 and 4, that part of page 12 containing title "Assignments of error"; all of pages 22 to 29 inclusive; the last four lines of page 190 and all of page 191	
6. All entries in Appearance Docket of Supreme Court of the State of Washington relating to Appeal No. 25,683 therein (Item 5 of Appellee's Præcipe)	
[fol. 459] 7. Pages 12 to 27 inclusive, of Defendant's Exhibit "11"	

Dated this 30th day of October, 1935.

G. W. Hamilton, Attorney General of State of Washington; R. G. Sharpe, Assistant Attorney General of State of Washington, Attorneys for Appellees.

[fol. 460] [File endorsement omitted.]

Endorsed on cover: File No. 40,127. Washintgon Supreme Court. Term No: 573. Great Northern Railway Company, Appellant, vs. The State of Washington. Filed November 7, 1935. Term No. 573, O. T., 1935.